TRADE RECIPROCITY II

HEARING
BEFORE THE
SUBCOMMITTEE ON INTERNATIONAL TRADE
OF THE
COMMITTEE ON FINANCE
UNITED STATES SENATE
NINETY-SEVENTH CONGRESS
SECOND SESSION
ON
S. 2094

MAY 6, 1982

Printed for the use of the Committee on Finance

U.S. GOVERNMENT PRINTING OFFICE
95-761 O WASHINGTON : 1982 HG 97-91

S361-49

COMMITTEE ON FINANCE

ROBERT J. DOLE, Kansas, *Chairman*

BOB PACKWOOD, Oregon
WILLIAM V. ROTH, Jr., Delaware
JOHN C. DANFORTH, Missouri
JOHN H. CHAFEE, Rhode Island
JOHN HEINZ, Pennsylvania
MALCOLM WALLOP, Wyoming
DAVID DURENBERGER, Minnesota
WILLIAM L. ARMSTRONG, Colorado
STEVEN D. SYMMS, Idaho
CHARLES E. GRASSLEY, Iowa

RUSSELL B. LONG, Louisiana
HARRY F. BYRD, Jr., Virginia
LLOYD BENTSEN, Texas
SPARK M. MATSUNAGA, Hawaii
DANIEL PATRICK MOYNIHAN, New York
MAX BAUCUS, Montana
DAVID L. BOREN, Oklahoma
BILL BRADLEY, New Jersey
GEORGE J. MITCHELL, Maine

Robert E. Lighthizer, *Chief Counsel*
Michael Stern, *Minority Staff Director*

Subcommittee on International Trade

JOHN C. DANFORTH, Missouri, *Chairman*

WILLIAM V. ROTH, Jr., Missouri
JOHN H. CHAFEE, Rhode Island
JOHN HEINZ, Pennsylvania
MALCOLM WALLOP, Wyoming
WILLIAM L. ARMSTRONG, Colorado
CHARLES E. GRASSLEY, Iowa
STEVEN D. SYMMS, Idaho

LLOYD BENTSEN, Texas
SPARK M. MATSUNAGA, Hawaii
DANIEL PATRICK MOYNIHAN, New York
DAVID L. BOREN, Oklahoma
BILL BRADLEY, New Jersey
HARRY F. BYRD, Jr., Virginia
MAX BAUCUS, Montana

CONTENTS

PUBLIC WITNESSES

Page
Advanced Micro Devices, Inc., W. J. Sanders, president and chairman 121
AFL-CIO, Howard D. Samuel, president, Industrial Union Department 163
AFL-CIO, Stephen Koplan, legislative representative 96
American Association of Exporters and Importers, Lee Greenbaum, representative of association, and president, Kemp and Beatley 183
Burns, George, president, consumer products division, SCM Corp 204
Burt, Robert N., vice president, FMC Corp 45
Data General Corp., Edson de Castro, president 110
De Castro, Edson D., president, Data General Corp 110
Du Pont Co., Dale E. Wolf, vice president 10
Emergency Committee for American Trade, Spencer W. Edson, representative 59
FMC Corp., Robert N. Burt, vice president 45
Greenbaum, Lee, president, Kemp and Beatley, representing American Association of Exporters and Importers 183
Hobbs, Claude E., vice president, Westinghouse Electric Corp 164
Koplan, Stephen, legislative representative, AFL-CIO 96
Malsbary, David, director of world markets, Monsanto Co 37
Monsanto Co., David Malsbary, director of world markets 37
Samuel, Howard D., president, Industrial Union Department AFL-CIO 163
Sanders, W. J. III, president and chairman, Advanced Micro Devices, Inc 121
SCM Corp., George Burns, president, consumer products division 204
Snowden, Gen. Lawrence F., president, Chamber of Commerce in Japan 65
Tsongas, Hon. Paul, U.S. Senator, State of Massachusetts 5
Spencer, Edson W., Emergency Committee for American Trade 53
Wolf, Dale E., vice president, Du Pont Co 10
Westinghouse Electric Corp., Claude E. Hobbs, vice president 164

ADDITIONAL INFORMATION

Committee press release 1
Prepared statement of Senator Bob Dole 1
Prepared statement of Senator William V. Roth 2
Prepared statement of Senator John C. Chafee 2
Senator Heinz's opening statement 4
Prepared statement of Senator Paul E. Tsongas 7
Prepared statement of Dr. Dale E. Wolf 12
Prepared statement of N. L. Reding 39
Prepared statement of Robert N. Burt 43
Prepared statement of Edson W. Spencer 55
Prepared statement of Lawrence F. Snowden 67
Prepared statement of Stephen Koplan 93
Prepared statement of Edson de Castro 112
Prepared statement of W. J. Sanders III 124
Senator Bradley's questions to Edson Spencer 157
Prepared statement of Howard D. Samuel and Claude E. Hobbs 166
Prepared statement of American Association of Exporters and Importers 187
Prepared statement of George F. Burns 206
George Burns' responses to questions by Senator Moynihan 213

COMMUNICATIONS

Page
American International Automobile Dealers Association ... 323
American Plywood Association ... 229
Automobile Importers of America, Inc., Ralph T. Millet, chairman ... 218
Automotive Parts and Accessories Association, Inc., Julian C. Morris, president ... 344
Business Roundtable Task Force on International Trade and Investment ... 264
Chamber of Commerce of the United States, Howard L. Weisberg, director, International Trade Policy ... 232
Computer and Business Equipment Manufacturers Association ... 293
Electronic Industries Association, John Sodolski, vice president ... 359
Elliot, David J., Joint Industry Group, U.S. Chamber of Commerce ... 360
Fox, Lawrence A., vice president and manager, International Economic Affairs Department, National Association of Manufacturers ... 368
Katz, Richard, National Democratic Policy Committee ... 242
League of Women Voters of the United States ... 308
Millet, Ralph T., chairman, Automobile Importers of America, Inc ... 218
Morris, Julian C., president, Automotive Parts and Accessories Association, Inc ... 344
National Association of Manufacturers, Lawrence A. Fox, vice president and manager, International Economic Affairs Department ... 368
National Democratic Policy Committee, Richard Katz ... 242
National Foreign Trade Council ... 325
Sodolski, John, vice president, Electronic Industries Association ... 359
Steinberg, David J., president, U.S. Council for an Open World Economy ... 320
U.S. Chamber of Commerce, David J. Elliot, chairman, Joint Industry Group ... 360
U.S. Chamber of Commerce, Joint Industry Group ... 360
U.S. Council for an Open World Economy, David J. Steinberg, president ... 320
Weisberg, Howard L., director, International Trade Policy, Chamber of Commerce of the United States ... 232

TRADE RECIPROCITY II

THURSDAY, MAY 6, 1982

U.S. SENATE,
SUBCOMMITTEE ON INTERNATIONAL TRADE,
Washington, D.C.

The committee met, pursuant to notice, at 2 p.m., in room 2221, Dirksen Senate Office Building, Hon. John C. Danforth (chairman) presiding.

Present: Senators Danforth, Dole, Roth, Chafee, Heinz, Bentsen, and Bradley.

[The press release announcing the hearing, and the prepared statements of Senators Dole, Roth, Chafee, and Heinz follow:]

PRESS RELEASE

FOR IMMEDIATE RELEASE, APRIL 15, 1982

United States Senate Committee on Finance—Subcommittee on International Trade.

FINANCE SUBCOMMITTEE ON INTERNATIONAL TRADE SETS PUBLIC HEARING ON S. 2094 AND OTHER "RECIPROCITY" BILLS

The Honorable John C. Danforth, Chairman of the Subcommittee on International Trade of the Senate Committee on Finance, announced today that the Subcommittee will hold a second hearing on S. 2094 and other trade reciprocity bills on Thursday, May 6, 1982 at which testimony will be received from private witnesses. The first hearing, at which only Government witnesses were heard, was held March 24, 1982.

The hearing will begin at 2:00 p.m. in Room 2221 of the Dirksen Senate Office Building

---

STATEMENT OF SENATOR BOB DOLE

Mr. Chairman, today the Subcommittee on Trade will again hear testimony on several of the market access bills which have been referred to the Finance Committee. I know the staff has been working both with other Senators and the administration, as agreed to by yourself and Ambassador Brock, to come up with an acceptable legislative proposal.

This effort is very important for several reasons. It has served to focus congressional thinking on U.S. trade policy and particularly the issue of fair and equitable market access for our exporters. It has also served to highlight our concerns for our trading partners.

On this latter point, I think the prepared statement of General Snowden, president of the American Chamber of Commerce in Japan is particularly noteworthy. After reviewing Japanese economic history and its impact on their trade policies, General Snowden states "The historical pattern has been that relaxation of restrictions by Japan has been achieved only under heavy outside pressure." General Snowden then makes a personal observation that the political leadership in Japan has received the strong message from the political leadership in the United States and Europe and that it is now committed to actions which will open the Japanese market. If this is the case, it is in no small part attributable to your efforts, Mr.

Chairman, and the other members of the committee who have been so concerned with this problem.

The progress of this legislation is, therefore, particularly important. It is my intention to work with you and the administration to come up with a bill acceptable to all of us.

While the technical aspects of this bill will of course be vitally important, it is equally important that we demonstrate to the administration and to the other countries with whom we trade our commitment both to vigorous enforcement of existing U.S. rights and the continuing process of opening foreign markets to our products, services, and investments.

STATEMENT BY SENATOR WILLIAM V. ROTH, JR.

I wish to thank Senator Danforth for convening this second round of hearings on reciprocity and the trade legislation now before the Finance Committee. Numerous trade and related problems continue to plague us—Japan's import restrictions, Europe's agricultural subsidies and Canada's investment restrictions—and unless we develop reasonable solutions now, pressures will grow to take stronger, unilateral action.

Our international picture is not improving. Yesterday, the Commerce Department reported trade news that was highly distressing. While the first quarter's merchandise trade deficit declined to $5.9 billion and there were predictions our overall balance of payments would be in surplus in 1982, it was expected imports would grow and, by year's end, our merchandise trade deficit would be even higher than that of 1981. We should all remember that last year's trade gap was $41 billion.

How long can we sustain such high deficits?

No, this is not good news. We should not be encouraged by balance of payments surpluses when we have $40 billion-plus merchandise deficits to which to look forward. Nor should we lay the blame for these trade imbalances solely at the door of a strong dollar. The unfair practices of our trading partners are even more important, since they distort the flow of goods and services, put pressure on the United States to absorb more than our fair share of the world's output, and rob Americans of jobs.

Japanese import quotas on agricultural products are a perfect case in point. These import quotas, imposed on 22 items ranging from rice to beef, from citrus products to wheat, are a most blatant example of trade-distoring barriers and have marred our relations with a crucial economic partner. For years, we have sought the elimination of these quantitative restrictions. Through successive rounds of multilateral trade talks, we have negotiated for liberlization. In numerous bilateral consultations over many years, we have pressed for removal. While there has been some progress, it has not been nearly enough.

The Japanese continue to limit our opportunities to sell processed and unprocessed farm products in their market. And, by doing so, they limit our potential to create jobs here through farming and exporting.

It is my hope that when the Japanese Government announces its package of trade reforms shortly, import quota elimination will be included. If it is not, I believe it will be time for the Administration to consider retaliation.

Should the President lack sufficient tools under U.S. law to achieve equity in agricultural and other market opportunities, we should strengthen the law. If he has sufficient authority, Congress must send a clear message that we are serious about obtaining our rights in the international marketplace and obtaining them now.

I believe the legislation before use and these hearings are timely and valuable. We must determine now whether we have the laws and the will to achieve market access and other commerical rights overseas equivalent to that which we freely accord to other countries in our market. If not, we must act swiftly to ensure that gaps are closed, imbalances redressed, and trade deficits eliminated.

We owe it to our workers and firms.

STATEMENT OF SENATOR JOHN H. CHAFEE

The hearings today provide the labor and business community representatives with an opportunity to let the members of this committee know how the current debate over reciprocity should be resolved.

At the first day of hearings on this issue, we heard Ambassador Brock tell us that he supports the overall policy objective of global reciprocity, meaning a fundamental principal embodied in the general agreement on tariffs and trade that the aggregate benefits of being a party to the GATT are roughly equal to the concessions given to all other members.

Ambassador Brock also indicated that he welcomed a negotiating mandate to strengthen existing international institutions to expand international agreements to cover services, investment, and high technology.

I believe Ambassador Brock's testimony was very helpful to us in clarifying the ways in which the concept of reciprocity, when it is defined to mean global reciprocity, as an overall policy goal, is consistent with U.S. trade policy and with the GATT.

We also heard Ambassador Brock tell us that the attemps to emphasize a reciprocity concept based on reciprocal market access or substantially equivalent competitive opportunities in section 301 might encourage bilateral, sectoral, or product-by-product reciprocity.

The statements that have been submitted by several of the witnesses before us today also make that point and go even further to say that this definition of reciprocity taken from sections 104 and 124 of the Trade Act of 1974 is a negotiating concept and is dangerous and inappropriate as the basis for a cause of action under section 301.

Mr. Chairman, I believe we would go a long way in this debate if we could agree on a definition of reciprocity once and for all. I would suggest we agree on the global reciprocity concept as suggested by Ambassador Brock to make it perfectly clear to our trading partners that we are not adopting a policy of retaliation, or sectoral reciprocity and instead are pursuing a policy of negotiation to achieve global parity under our trading agreements.

I also believe that the consideration of market access as one of many factors that the President may look at in a section 301 case is preferable to the creation of the denial of substantially equivalent competitive opportunities as a separate cause of action.

However, instead of using the term market access, I suggest that the Committee consider language which would merely list denial of competitive opportunities as one of many factors to be considered in deciding whether a foreign act or practice is unjustifiable or unreasonable.

I believe this language is preferable for three reasons. First, I believe that qualifying the phase "competitive opportunities" or "market access" with terms such as "substantially equivalent" or "equivalent" implies a bilateral comparison of either balances of trade overall or on a sector-by-sector or product-by-product basis. I think we should avoid that inference because I do not believe we want to foster that kind of approach. Certainly, we do not want to prevent the President from making such comparisons as part of his overall analysis, but we do not want to make it the focal point of his analysis either.

That brings me to the second reason for my suggestion. I believe that too much emphasis has been placed on looking at our trade deficit, particularly with Japan. Of course, it is a problem that is serious and that we must try to solve, but in trying to solve it we have to recognize that there are many reasons for our trade deficit and market access problems.

Clearly, one of the chief causes for our trade deficit are trade barriers which we must continue to work to eliminate through negotiation. However, there are a host of other factors, such as social and cultural differences and resulting foreign consumer preferences which U.S. companies have to learn to deal with, just as the Japanese have learned so successfully how to meet our consumer preferences. I believe an approach which requires a comparison of relative market access ignores these other factors.

The third reason for my suggestion is that we should not make it an element of our trade policy to insist on a certain percentage share of a foreign market. What is and should be a part of our trade policy is to expect the unfettered opportunity to compete for that foreign market share.

Mr. Chairman, unfortunately, I cannot stay to hear the testimony of the witnesses, but I would like to ask Mr. Spencer of Honeywell Corporation to answer a question in the course of his testimony.

The statement submitted on behalf of the Emergency Committee for American Trade contains a number of proposals. Mr. Spencer, I would like to know whether in your view these proposals require legislation and whether they could be implemented administratively.

Finally, Mr. Chairman, I want to commend you for your leadership in the debate on this question of the role of reciprocity in our trade policy. It is a question that needs to be resolved, and you have taken a leading role in trying to answer that question.

Whether we ultimately resolve this question through legislation or other means, I intend to continue to work with you, and I appreciate your openness and flexibility in listening to all points of view on this issue.

Opening Statement of Senator John Heinz

RECIPROCAL MARKET ACCESS LEGISLATION

Mr. Chairman, I had hoped that after the last hearing and the extensive public debate that has ensued, there would be greater common understanding of the term "reciprocity" and its role in our trade policy. My own experience in the past few weeks, however, and my review of some of the statements that will be made today, suggest that some confusion still lingers as to the meaning of the term, and therefore, its utility.

As a result I would like to begin by repeating several of the points I made at the first hearing on March 24. Very simply, we are confronted with the rapid growth of world protectionism and the restoration of mercantilism as a popular economic philosophy. Nations are protecting their industries of the future while we have a comparative advantage, and then, when they can compete, they unleash them at cutrate prices to drive others out of the market. They are protecting their industries of the past through subsidies and dumping, exporting their unemployment as well as their production.

Reciprocal market access legislation is a tactical response to these developments intended to give our government a better means of responding to the unfair practices of others and a greater incentive to do so.

This legislation is intended to open others' doors, not shut ours.

It is concerned with market access, not bilateral trade balances.

It approaches trade problems broadly, not sectorally.

It provides tools which are discretionary, not mandatory.

It is concerned with barriers to services and investment as well as goods.

It is directed at many countries, not just Japan.

It is intended to strengthen the multilateral process, not weaken it.

Finally, it is my judgment that Senator Danforth's bill and my bill conform to these principles, and that whatever is ultimately approved by this Committee will conform to them as well.

These are responsible objectives, and I have yet to hear anyone take exception to efforts to achieve them. Concern has been expressed, however, about precisely those things that are not part of these bills—narrow sectoral considerations, bilateral trade balances, mirror image retaliation, and so on. That concern is valid, but those who have expressed it have the burden of showing how any of the pending bills contain such provisions. And that is a burden I intend to place on today's witnesses. I hope they will be able to move beyond general statements of what is or is not desirable and instead focus specifically on the proposals that have been made. What about them is unacceptable? In what way do they not achieve the objectives I have outlined? In what ways are they acceptable? What have they omitted?

Senator Danforth, the Chairman of the Subcommittee, is presently engaged in what I hope will be a fruitful effort to develop a bill broadly acceptable to those concerned with this issue, including the Administration. The specific suggestions of today's witnesses should be of considerable help to that process.

Let me say in conclusion that there are two areas of concern not covered in either of the original reciprocity bills that I hope will ultimately find their way into the legislation, and which I understand will be the subject of some testimony today. They are issues involving industrial property rights in other countries and problems of the high technology industries. I have proposed legislation with respect to the latter, and I am particularly grateful to the Chairman for including a panel of high tech witnesses in today's schedule, since many of their problems are, in fact, market access and reciprocity problems.

Finally, Mr, Chairman, let me simply suggest that the fundamental problem before us in this legislation is how to construct a framework within which the Administration will act responsibly. The key word here is "action." The problems we face are real. The foreign barriers that exist are real. Congress, in my judgment, is tired of talk that explains those barriers away, and tired of endless negotiations that have no result. We would prefer the Administration act within our guidelines, but we are prepared to act legislatively to deal with these problems one by one if adequate reciprocity legislation cannot be enacted.

Senator **Dole**. Mr. Chairman, I want to thank you for your continuing interest in this matter. You are going to look today, again, at bills concerning market access. I know the staff has been working with you and other Senators and the administration in hopes that we might come up with some acceptable legislative proposals this year. This effort is very important for several reasons. It has served to focus congressional thinking on U.S. trade policy and, particularly, the issue of fair and equitable market access for exporters. It has also served to highlight our concerns for our trading partners.

On this latter point, I think the prepared statement of General Snowden, the president of the American Chamber of Commerce in Japan, is particularly noteworthy. After reviewing Japanese economic history and its impact on their trade policies, General Snowden states, "The historical pattern has been that relaxation of restrictions by Japan has been achieved only under heavy outside pressure." General Snowden then makes a personal observation that the political leadership in Japan has received the strong message from the political leadership in this country and Europe, and is now committed to actions to open the Japanese market.

If this is the case, it is in no small part attributable to your efforts, Mr. Chairman, and other members of this subcommittee who have been so concerned with this problem. So I think the progress of this legislation is particularly important and I certainly want to work with members of the committee in reaching an acceptable solution. It is equally important that we demonstrate to the administration and to the other countries our commitment to vigorous enforcement of existing U.S. rights, and the continuing process of opening foreign markets to our products, services, and investments. I would ask that my full statement be made a part of the record.

Senator **Danforth**. Senator Dole, thank you very much.

I would like to just make a few points at the outset. I am obviously pleased with any improvement in Japan or any other country. But the point of this bill is not to serve as kind of a raft hoping to express some sort of voluntary agreements or arrangement with any other country. But rather, the purpose of the bill is to get it enacted into law, and to create with the new law, a mechanism which would provide an ongoing process for trying to achieve equitable treatment for U.S. exporters.

I do think that things are progressing fairly well. But we hope we will have a bill which can be enacted some time this year.

We are pleased to have Senator Tsongas with us this afternoon.

STATEMENT OF HON. PAUL TSONGAS, A U.S. SENATOR FROM THE STATE OF MASSACHUSETTS

Senator **Tsongas**. Mr. Chairman, Senator Dole, let me say I am pleased to be here. I am also pleased by the interest exhibited in this issue shown by the number of people in the meeting and those that are outside.

A few months ago I was involved in the process of trying to draft legislation on reciprocity. And as you know, we were all sort of involved in that process at the time. I have concluded that reciprocity is not the answer to our trade problems. Even if the trade barriers are removed, our trade balance with Japan would not be righted. In fact, the vast majority of it would still be there. I think that if we focus on protectionism as a solution to our trade problem that we are simply missing the point. I have concluded after these few months that protectionism is, indeed, an opiate. It delays the coming to grips with our real enemy, which is our capacity or incapacity to compete with other industrialized economies.

Now the focus has been Japan, and I think properly so. They offer a particular challenge to us because of their innovation and the inroads they are gaining in many of the products that we have traditionally been associated with. And the most dramatic is the recent 70-percent penetration by Japan in the 64 K-RAM semiconductor industry. We have all experienced the decline in automobiles and TV sets and cameras, but now clearly Japan is focusing in on high technology. And for a State like mine, that is a very serious threat indeed.

How has Japan done it? Well, there are a number of ways. One, they have very aggressive, private strategies in terms of which products they want to get into. And they have a very supportive government. They also have—as we do not—a very cooperative relationship between management and labor. And workers share, as you know, to a much greater extent than ours do on the issue of profits in directions of their particular companies. In the United States, we have the tradition of a confrontational adversarial position between management and labor. And that, I think, has really cost us dearly over the years.

The issue of Japan, I think, also forces us to do some thinking that we have not done before. For example, the Japanese invest at a greater rate than we do, and do much more long-term planning than we do.

I am an advocate of a macroeconomic view of these kinds of issues. If the Japanese throw out more money, more engineers, more development of a particular problem, they will, in the long term, take that particular product line away from us. And in this country, for example, where we produce fewer engineers absolutely than they do and invest fewer of our GNP into basic research in the private sector than they do, by definition they are going to win, and we should not be surprised when that indeed happens.

Let me suggest some subtopics which the committee may take a look at. One is very serious. The declining percentage of our GNP devoted to civilian research and development. There is no way that can continue given what the Japanese are doing without the most dire consequences. Insufficient capital investment. High interest rates we are all familiar with. But what about the declining commitment to higher education? The Japanese produce more engineers than we do absolutely, and we then proceed to cut back on graduate school and professional school education. How can we compete? The fact is, we cannot.

Overregulation. Talked about and discussed on the Senate floor many times. The overreliance on the American management on the short term. Where is the long-term horizon that the Japanese are so familiar with? We don't have that in this country. We tend to be involved in short-term profit motivation.

The retraining of workers.

Those kinds of things, I think, are very important.

Let me say in closing—I would ask that the balance of my statement appear in the record because you have a very distinguished and lengthy list to hear from—that I think you have to divide this issue into two parts. One are those industries of ours which are traditional—automobiles, steel, that kind of thing. And, second, that part of our economy which is growing, which is basically high technology. I think we have very different needs, and they have to be addressed differently. And I would hope that what we do in some ways to provide some relief to the more traditional industries will not have the unintended incongruous effect of making it more difficult for our growing high-technology industries to penetrate other markets. To the loss that has been going on in places like Brazil and so forth, it has to be addressed. And I am confident that this committee is the one to do it. And I commend the committee for its attention. And I would hope that this year we will see some action on the Senate floor as well.

I thank the chairman.

[The prepared statement follows:]

STATEMENT OF SENATOR PAUL E. TSONGAS

Mr. Chairman and Members of the Committee, thank you for permitting me to testify on the important subject of international trade. A few months ago we were all running around talking about reciprocity. Reciprocity is not the answer to our trade problems. Even if trade barriers are removed, our trade balance with Japan would not be righted. We must go beyond reciprocity.

If we focus on protectionism as the solution to our trade problems, we are missing the point. Protectionism is an opiate. It delays our coming to grips with the real enemy which is our own inability to compete with other industrial economies.

The Japanese in particular offer a challenge to us because they are gaining inroads into the markets of our leading economic growth area-high technology. During the past year the Japanese have captured 70 percent of the world market in the newest generation of semi-conductors—the 64K RAM. We will not gain back this market—or our market in automobiles, television sets, cameras, or other goods—by passing a trade bill.

The Japanese have obtained their successes by combining aggressive private business strategies with a supportive government. They also have a cooperative partnership between business and labor. Workers share not only the decision-making but also the profits of their companies. This system is in contrast to our own society where there are adversarial relationships between labor, management, and the government. This lack of cooperation results in such things as over-regulation; wage rate increases which exceed productivity gains in certain industries; anti-trust restrictions which prevent us from forming export trading companies; and other features of our economy which are counterproductive to our goal of greater productive efficiency.

These are not the only reasons Japan is a more efficient producer of industrial goods than we are. The Japanese are investing at a greater rate and they do more long-term planning than we do. American businesses are motivated to a greater extent by short-term profits. The Japanese government devotes a larger percentage of its GNP to civil research and development than we do. This year, instead of increasing our research funds, we cut them further.

I think we should focus our attention on those aspects of our economy which are beginning to threaten our survival in the marketplace—

The declining percentage of our GNP devoted to civilian Research and Development;

Insufficient capital investment;

High interest rates;

Declining commitment to higher education, especially as it affects graduate education;

Over-regulation;

Over-reliance on short-term profit motivations;

Lack of re-training workers in the skills required in the growing areas of our economy—especially high technology industries;

Low savings rates; and

Wage increases exceeding productivity gains in certain industries.

Our country needs a productive partnership of business, labor, and government. I believe the work of this committee has demonstrated that government has an important contribution to make to such an American economic partnership. In addition to our own industrial difficulties, unfair trade practices do exist, and it is important that government take vigorous and forceful action on trade, while avoiding the dangers of protectionism. In formulating a legislative response to our trade problems, I hope this Committee will:

(1) Specifically address the growing number of international trading barriers presently encountered by the leading edges of our economic growth—high technology industries.

(2) Recognize the growing use of non-tariff barriers by foreign governments such as:

Discriminatory public and private procurement; prohibitions on joint research opportunities; prejudicial financing; obstacles to exchange of technology.

(3) Extend the trade negotiation framework to include new codes in the areas of investments and services.

(4) Call for a deliberate and in-depth monitoring of such foreign government action that creates barriers to U.S. industry.

(5) Call upon the President and our trade negotiators to seek equal national treatment by foreign governments of U.S. firms.

I hope the committee will avoid the dangers of automatic reciprocal tariff actions which can complicate the effort to negotiate the removal of trade barriers, and which might serve to erect barriers behind which the competitiveness of American industry might lag. We must not confuse the industrial problem—which is our own problem—with the trade problem which we share with Japan and other nations.

The sooner we acknowledge these distinct problems, and proceed to tackle them in a comprehensive fashion, the closer we will be to long term economic viability.

Senator DANFORTH. Thank you. Senator Dole.

Senator DOLE. No questions.

Senator DANFORTH. Senator Roth.

Senator ROTH. No questions.

Senator DANFORTH. Let me just say as you are leaving that I agree that protectionism is an opiate. We have to withstand the pressures which are going for protectionism. I also believe that clearly we have to become more competitive with the countries. The question is, Supposing we do produce some products that are obviously competitive, and we are shut out of other markets, how do we get into them? That is what the bill before us is intended to try to do. To assure that we are competitive. That we produce products which can compete with other countries. That we have equal market access as they have in ours.

Senator TSONGAS. Let me say, Mr. Chairman, that I think that in the case of Japan, Japan will do only what they have to do to avoid some kind of reaction. That's been the history. And that is, I think, what you have to recognize. But even if we take those nontariff areas down, we still have a major problem.

If I were a Japanese, what I would want the United States to do is very simple. Spend all our time talking about nontariff barriers, protectionism, that kind of thing, and put off the inevitable coming to grips with the basic problem. That will give them even more leadtime than they have right now.

Thank you, Mr. Chairman.

Senator DANFORTH. Thank you. Senator Heinz.

Senator HEINZ. Mr. Chairman, I just want to move to where you are moving on the reciprocity bill. And to the distinguished panel of witnesses you brought here today. I am particularly indebted that you have seen fit to include a panel to testify on high technology problems.

I want, however, to ask the witnesses today to try, to the extent possible, to concentrate on the specifics of the legislation that is under consideration. I think Senator Danforth has introduced an excellent bill. It's almost as good as mine in many ways. [Laughter.]

And I have been struck by the fact that there are a lot of rumors going around about reciprocity legislation. And none of the rumors, as far as I can ascertain, happen to relate particularly to either his or my bill. Both his bill and my bill are designed to open others' doors; not shut ours. Other people's doors. We are concerned with market access; not bilateral trade balances. We want to address trade problems broadly; not sectorally. We are providing tools that are discretionary; not mandatory. We are concerned about barriers to services and investment; not just goods—merchandise trade. It may not always sound this way, but we are directed at many countries, not just at Japan, egregious as their trade restrictions may be. And it is intended—and this is important—it is intended to strengthen the multilateral approach and process to trade problems; not to weaken it.

I really have not yet heard from any witness that with respect to the two bills we are holding hearings on, there are any problems in these specific areas. There are not, as far as I know, narrow, sectoral considerations in these bills. There are not bilateral trade balances, mirror image and so on. They shouldn't be in these bills. So the burden I really intend to place on today's witnesses is to move beyond general statements and focus specifically on the proposals that Senator Danforth, I, and others have made. And I really think we need to pin down what, if anything, is really unacceptable about them, in what ways do they not achieve the objectives that I and others have outlined, in what ways are they acceptable, and what have they omitted.

I think we are getting down to the short strokes on reciprocity legislation. I think the chairman of the subcommittee and the chairman of the full committee intend to move rapidly, but we want to have good legislation. We want to see good legislation pass the Senate. We don't want to send the wrong signal to anybody, but we want to send strong legislation, and an appropriately strong signal.

So, Mr. Chairman, I thank you for yielding. And I appreciate you having all these witnesses.

Senator **DANFORTH**. The first panel is David Malsbary, Monsanto; Dale Wolf, Du Pont; Robert Burt, FMC.

Mr. Malsbary, if you would go first.

If the witnesses would take 5 minutes each, we would certainly appreciate it because of the very long list of witnesses. We have something like 11 witnesses to appear.

Mr. Malsbary.

STATEMENT OF DALE E. WOLF, VICE PRESIDENT, DU PONT CO.

Mr. **Wolf**. Mr. Chairman, and members of the trade subcommittee, I am Dale Wolf, vice president of Du Pont Co. and chairman of the board of the National Agricultural Chemicals Association. I plan to make a brief opening statement on behalf of our legislative proposal, and then ask my NACA colleagues, Mr. Malsbary from Monsanto on my left, and Mr. Burt, FMC, on my right. Mr. Burt will summarize this proposal and document the problems that have been discussed with various members of your committee over the past 4 years.

In addition, I have submitted with our written proposal, a detailed legislative proposal that addressed this matter.

As the head of an association of manufacturers of agricultural chemicals which are sold in virtually every country in the world, I am deeply concerned with the issues of market access and fair trade which you and your colleagues raised in your respective bills. Specifically, we believe that a firm and immediate U.S. initiative is essential to prevent the deterioration of the U.S. competitive position in world markets and the erosion of the industrial property rights system upon which the worldwide technological and economic advancement is predicated.

The membership of the NACA is composed of 115 companies engaged in the production of proprietary products. These products are the result of extensive and extremely costly research and development over a period of years. The only way to insure a fair return on your investment on such products is to obtain adequate patent protection at the domestic and international level. Many of our member companies have been denied the ability to obtain or protect effectively their industrial property rights abroad due to foreign government inaction, interference, or unwillingness to live up to trade agreement obligations. The legal systems of many foreign countries either do not offer protection for certain categories of industrial properties or are not sufficient to provide timely, effective protection of whatever rights may be obtained.

It is important to recognize that the problem of the U.S. agricultural chemical exporters are merely representative of a larger, more egregious threat to U.S. competitiveness and orderly world trade. The erosion or rejection of fundamental industrial property rights and basic business consideration undermines the competitiveness of any U.S. product that relies upon technology or development factors for its success. And it is common knowledge that the U.S. technological advancement is the best, if not the last, hope for U.S. product competitiveness in foreign markets. If rights to the property value of invention, research, and development are ignored or emaciated, this not only jeopardizes the ability of the U.S. companies to compete overseas, it chills technology and economic development on a global scale.

Now, Mr. Chairman, I would like to briefly cite some of the specific problems in this area as Du Pont sees them.

In many countries, it is not possible to obtain a quick injunction to stop patent infringement. Knowing this, manufacturers are able to produce infringing goods, obtain substantial business at the expense of the patent owners, and close up shop only when finally ordered by the courts.

One Asian country, Taiwan in particular, has facilitated this practice in recent years. Du Pont has patents relating to one of our major agricultural chemicals in over 80 countries, including Taiwan. In the course of an investigation to discover the source of product being sold in Europe in violation of our patents, we discovered some six producers in Taiwan who were producing our product for export.

Recognizing that Du Pont had no effective recourse under third country judicial systems, one of the infringing producers graciously offered to respect our patent rights if we would purchase the output of his facility. This is obviously a no-win proposition. We either suffer the loss of major markets around the world, or idle production facilities in the United States.

This is the kind of situation where U.S. trade laws can and must provide effective relief. Foreign governments must be made to know that they cannot wink at valid industrial property rights, and continue to enjoy unlimited access to our markets.

Thank you, Mr. Chairman, members of the committee. I would now like to turn to David Malsbary, of Monsanto, who will briefly describe some problems that they have faced around the world.

[The prepared statement follows:]

TESTIMONY OF DR. DALE WOLF, VICE PRESIDENT OF THE DUPONT COMPANY AND CHAIRMAN OF THE NATIONAL AGRICULTURAL CHEMICALS ASSOCIATION (NACA) AND OTHER NATIONAL AGRICULTURAL CHEMICALS ASSOCIATION MEMBERS BEFORE THE SUBCOMMITTEE ON INTERNATIONAL TRADE OF THE SENATE FINANCE COMMITTEE

MAY 6, 1982

Mr. Chairman and members of the International Trade Subcommittee, I am Dale Wolf, Vice President of the Du Pont Company and Chairman of the National Agricultural Chemicals Association (NACA). I plan to make a brief opening statement on behalf of our legislative proposal and then ask my NACA Board member colleagues, Mr. Reding of Monsanto and Mr. Burt of FMC to help document how this proposal would help resolve the problems we have been discussing with many members of this Committee over the last four years. In addition, I have submitted with our written proposal, a detailed legislative proposal which addresses this matter quite effectively.

As the head of an association of manufacturers of agricultural chemicals which are sold in virtually every country of the world, I am deeply concerned with the issues of market access and fair trade which you and your colleagues raised in your respective bills. Specifically, we believe that a firm and immediate U. S. initiative is essential to prevent the deterioration of the U. S competitive position in world markets and the erosion of the industrial property rights system upon which worldwide technological and economic advancement is predicated.

The membership of NACA is composed of 115 companies engaged in the production of proprietary products. These products are the result of extensive and extremely costly research and development over a period of many years. The only way to insure a fair return on your investment on such products is to obtain adequate patent protection at the domestic and international level. Many of our member companies have been denied the ability to obtain or protect effectively their industrial property rights abroad, due to foreign government inaction, interference or unwillingness to live up to trade agreement obligations. The legal systems of many foreign countries either do not offer protection for certain categories of industrial property or are not sufficient to provide timely, effective protection of whatever rights may be obtained.

It is important to recognize that the problems of U. S. agricultural chemical exporters are merely representative of a larger, more egregious threat to U. S. competitiveness and orderly world trade. The erosion or rejection of fundamental industrial property rights and basic business considerations undermines the competitiveness of any U. S. product that relies upon technological or developmental factors for its success. And, it is common knowledge that U. S. technological advancement is the best, if not the last, hope for U. S. product competitiveness in foreign markets. If rights to the property value of invention, research and development are ignored or emaciated, this not only jeopardizes the ability of U. S. companies to compete overseas, it chills technological and economic development on a global scale.

Now, Mr. Chairman, I would like to briefly cite some of the specific problems in this area as Dupont sees them.

In recent years, makers of trademarked goods have been victimized by counterfeiters who reproduce a well-known product and pass off their imitation as the genuine article. These pirate operators who are generally found in Asia have copied everything from watches to blue jeans to home computers. The violation of the valuable property rights built up by the legitimate makers of these articles over many years has received wide recognition, to the extent that work is now going on within GATT to develop an international code on commercial counterfeiting.

It is unfortunate, but true, that patent piracy occurs with equally serious consequences.

In many countries it is not possible to obtain a quick injunction to stop patent infringement. Knowing this, pirate manufacturers are able to produce infringing goods, obtain substantial business at the expense of the patent owner and close up shop only when finally ordered to by the courts.

One Asian country in particular has facilitated this practice in recent years. Du Pont has patents relating to one of our major agricultural chemicals in over 80 countries including this Asian country. In the course of an investigation to discover the source of product being sold in Europe in violation of our patents there we discovered some six producers in the Asian country who were producing our product for export.

Recognizing that Du Pont had no effective recourse under third country judicial systems, one of the infringing producers graciously offered to respect our patent rights if we would purchase the output of his facility. This is obviously a no-win proposition. We either suffer the loss of major markets around the world or idle production facilities in the United States.

Proposed Amendments to Title 19 of the United States Code

Deletions are indicated by striking the word, e.g., ~~a basis~~. Additions are indicated by underlining, e.g., and reciprocal treatment.

§ 2102. Congressional statement of purpose

The purposes of this chapter are, through trade agreements affording mutual benefits and reciprocal treatment--

(1) to foster the economic growth of and full employment in the United States and to strengthen economic relations between the United States and foreign countries through open and nondiscriminatory world trade;

(2) to harmonize, reduce, and eliminate barriers and distortions to trade and commerce on a basis which assures substantially equivalent competitive opportunities for the commerce of the United States;

(3) to establish fairness and equity in international trading and commercial relations, including reform of the General Agreement on Tariffs and Trade;

(4) to provide adequate procedures to safeguard American industry and labor against unfair or injurious import competition, and to assist industries, firm, workers, and communities to adjust to changes in international trade flows;

(5) to open up market opportunities for United States commerce in nonmarket economies;

(6) to provide fair and reasonable access to products of less developed countries in the United States taking into account the reciprocal treatment afforded the United States by such countries;.

(7) to provide substantially equivalent minimum safeguards for the acquisition and enforcement of industrial property rights and the property value of proprietary data.

§ 2112. Nontariff barriers to and other distortions of trade

Congressional findings; directives; disavowal of prior approval of legislation

(a) The Congress finds that barriers to (and other distortions of) international trade and commerce are reducing the growth of and access to foreign markets for the products and services of United States agriculture, industry, mining, and commerce, diminishing the intented mutual benefits of reciprocal trade concessions, adversely affecting the United States economy, preventing fair and equitable access to supplies, and preventing the development of open and nondiscriminatory trade among nations. The President is urged to take all appropriate and feasible steps within his power (including the full exercise of the rights of the United States under international agreements) to harmonize, reduce, or eliminate such barriers to (and other distortions of) international trade and commerce. The President is further urged to utilize the authority granted by subsection (b) of this section to negotiate trade agreements with other countries and instrumentalities providing on ~~a basis~~ the bases of mutuality and reciprocity for the harmonization, reduction, or elimination of such barriers to (and other distortions of) international trade and commerce. Nothing in this subsection shall be construed as prior approval of any legislation which may be necessary to implement an agreement concerning barriers to (or other distortions of) international trade and commerce.

Presidential determinations prerequisite to entry into trade agreements

(b) Whenever the President determines that any barriers to (or other distortions of) international trade and commerce of any foreign country or the United States unduly burden and restrict the foreign trade or commerce of the United States or adversely affect the United States economy, or that the imposition of such barriers is likely to result in such a burden, restriction, or effect, and that the purposes of this chapter will be promoted thereby, the President, during the 13-year period beginning on

January 3, 1975, may enter into trade agreements with foreign countries or instrumentalities providing for the harmonization, reduction, or elimination of such barriers (or other distortions) or providing for the prohibition of or limitations on the imposition of such barriers (or other distortions).

Presidential consultation with Congress prior to entry into trade agreements

(c) Before the President enters into any trade agreement under this section providing for the harmonization, reduction, or elimination of a barrier to (or other distortion of) international trade and commerce, he shall consult with the Committee on Ways and Means of the House of Representatives, the Committee on Finance of the Senate, and with each committee of the House and the Senate and each joint committee of the Congress which has jurisdiction over legislation involving subject matters which would be affected by such trade agreement. Such consultation shall include all matters relating to the implementation of such trade agreement as provided in subsections (d) and (e) of this section. If it is proposed to implement such trade agreement, together with one or more other trade agreements entered into under this section, in a single implementing bill, such consultation shall include the desirability and feasibility of such proposed implementation.

Submision to Congress of agreements, drafts of implementing bills, and statements of proposed administrative actions

(d) Whenever the President enters into a trade agreement under this section providing for the harmonization, reduction, or elimination of a barrier to (or other distortion of) international trade and commerce, he shall submit such agreement, together with a draft of an implementing bill (described in section 2191(b) of this title) and a statement of any administrative action proposed to implement such agreement, to the Congress as provided in subsection (e) of this section, and such agreement shall enter into force with respect to the United States only if the provisions of subsection (e) of this section are complied with and the implementing bill submitted by the President is enacted into law.

Steps prerequisite to entry into force of trade agreements

(e) Each trade agreement submitted to the Congress under this subsection shall enter into force with respect to the United States if (and only if)--

(1) the President, not less than 90 days before the day on which he enters into such trade agreement, notifies the House of Representatives and the Senate of his intention to enter into such an agreement, and promptly thereafter publishes notice of such intention in the Federal Register;

(2) after entering the agreement, the President transmits a document to the House of Representatives and to the Senate containing a copy of the final legal text of such agreement together with--

(A) a draft of an implementing bill and a statement of any administrative action proposed to implement such agreement, and an explanation as to how the implementing bill and proposed administrative action change or affect existing law, and

(B) a statement of his reasons as to (i) how the agreement serves the interests of United States commerce and meets the standards and purposes set forth in this section and in Section 2 (19 U.S.C. 2102) and as to (ii) why the implementing bill and proposed administrative action is required or appropriate to carry out the agreement; and

(3) the implementing bill is enacted into law.

Obligations Imposed upon foreign countries or instrumentalities receiving benefits under trade agreements

(f) To insure that a foreign country or instrumentality which receives benefits under a trade agreement entered into under this section is subject to the obligations imposed by such agreement, the President may recommend to Congress in the implementing bill and statement of administrative action submitted with respect to such agreement that the benefits and obligations of such agreement apply solely to the parties to such agreement, if such application is consistent with the terms of such agreement. The President may also recommend with respect to any such agreement that benefits and obligations of such agreement not apply uniformly to all parties to such agreement, if such application is consistent with the terms of such agreement.

(g) The President shall seek to amend or revise all trade agreements in force or pending between the United States and a foreign country at the time that this subsection is enacted into law to conform such agreements to the standards and purposes set forth in this section and in section 2 (19 U.S.C. 2102).

(h) The President shall seek to amend or revise and incorporate in all relevant trade agreements between the United States and any foreign country the following clause:

> "Each party to this agreement agrees to provide substantially equivalent minimum protection for the industrial property rights and the property value of proprietary data of the nationals and residents of each other party. Each party further agrees to respect the relevant laws and regulations on industrial property rights held by the nationals or residents of any party (including in countries not a party to this agreement) and not assist others to infringe those rights."

Definitions

~~(g)~~ (i) For purposes of this section--

(1) the term "barrier" includes the American selling price basis of customs evaluation as defined in section 1401a or 1402 of this title, as appropriate;

(2) the term "distortion" includes any act, policy, or practice of a foreign government, instrumentality, national or resident thereof, that is unjustifiable, unreasonable or discriminatory and burdens or restricts U.S. commerce, such as a subsidy; ~~and~~

(3) the term "international trade" includes trade in both goods and services; and

(4) the term "commerce" includes all commercial intercourse between the United States and foreign nationals, and the means or the encouragements by which enterprise is fostered and protected, such as by the provision and the protection of industrial property rights including the property value of proprietary data.

§2411. Determinations and actions by President

(a) Determinations requiring action.--If the President determines that action by the United States is appropriate -

(1) to enforce the rights of the United States under any trade agreement; or

(2) to respond to any act, policy or practice of a foreign country or instrumentality, or national or resident thereof, that

(A) is inconsistent with the provisions of, or other wise denies benefits to the United States under, any trade agreement, or

(B) is unjustifiable, unreasonable, or discriminatory and burdens or restrict, or threatens to burden or restrict, United States commerce;

the President shall take all appropriate and feasible action within his power to enforce such rights or to obtain the elimination of such act, policy, or practice. Action under this section may be taken on a nondiscriminatory basis or solely against the products or services of the foreign country or instrumentality involved as the President determines is appropriate.

(b) Other action.--Upon making a determination described in subsection (a) of this section, the President, in addition to taking action referred to in such subsection, may--

(1) suspend, withdraw, or prevent the application of, or refrain from proclaiming, benefits of trade agreement concessions to carry out a trade agreement with the foreign country or insturmentality involved; and

(2) impose duties or other import restriction on the products of, and fees or restrictions on the services of, such foreign country or instrumentality for such time a he determines appropriate; and

(3) take the following actions, either independent of or in addition to, (1) and (2) above--

(A) enter into bilateral or multilateral negotiations to further the standards and purposes set forth in sections 2 and 102 (19 U.S.C. 2102, 2112);

(B) adjust government procurement policies and practices to provide for procurement from nations which provide reciprocal market access to comparable United States producers, but only if such procurement is consistent with the provisions of the Code on Government Procurement or similar bilateral arrangements;

(C) instruct the United States directors of the International Bank for Reconstruction and Development and the International Monetary Fund to vote against loans or other assistance from their respective institutions to countries which do not adhere generally to principles of national treatment and market access;

(D) request Federal regulatory agencies (including the Civil Aeronautics Board, Office of the Comptroller of the Currencies, Federal Communications Commission, Federal Reserve Board, Interstate Commerce Commission, Federal Maritime Commission, and Federal Energy Regulatory Commission) to consider (if such consideration would not violate any multilateral agreement) a country's adherence to principles of national treatment and reciprocal market access in making any decision or taking any action with respect to an application or request from such country or nationals of such country; or

(E) withdraw, suspend or limit the eligibility of the relevant country or the eligibility of selected products of that country from the Generalized System of Preferences provided in Title V of the Trade Act of 1974 (19 USC 2461 et seq.)

(4) take any other action which the President determines appropriate, including action to obtain the elimination of such unjustifiable, unreasonable, or discriminatory barriers or restrictions on foreign direct investment by citizens or

nationals of the United States.

(c) Presidential procedures.--

(1) Action on own motion.--If the President decides to take action under this section and no petition requesting action on the matter involved has been filed under section 2412 of this title, the President shall publish notice of his determination, including the reasons for the determination in the Federal Register. Unless he determines that expeditious action is required, the President shall provide an opportunity for the presentation of views concerning the taking of such action.

(2) Action requested by petition.--Not later than 21 days after the date on which he receives the recommendation of the Trade Representative under section 2414 of this title with respect to a petition, the President shall determine what action, if any, he will take under this section, and shall publish notice of his determination, including the reasons for the determination, in the Federal Register.

(d) Special provision

(1) Definition of commerce.--for purposes of this section, the term "commerce" includes, but is not limited to, services associated with international trade, whether or not such services are related to specific products, and all commercial intercourse between the United States and foreign nationals, and the means or the encouragements by which enterprise is fostered and protected, such as by the provision and the protection of industrial property rights and the property value of proprietary data.

(2) **Vessel construction subsidies.**--An act, policy, or practice of a foreign country or instrumentality that burdens or restricts United States commerce may include the provision, directly or indirectly, by that foreign country or instrumentality of subsidies for the construction of vessels used in the commercial transportation by water of goods between foreign countries and the United States.

(3) Acquisition and protection of industrial property rights. -- An act, policy, or practice of a foreign country or instrumentality, national or citizen thereof, that is unjustifiable, unreasonable or discriminatory and burdens or restricts United States commerce may include an act, policy or practice that:

(i) fails to provide substantially equivalent processes or standards as are available in the United States for the acquisition or protection of industrial property rights and the property value of proprietary data, or

(ii) assists in the infringement of industrial property rights owned by a United States person in a third country.

§ 2412. Petitions for action by President

(a) Filing of petition with Trade Representative.--Any interested person may file a petition with the United States Trade Representative (hereinafter in this subchapter referred to as the "Trade Representative") requesting the President to take action under section 2411 of this title and setting forth the allegations in support of the request. The petition may request that the Secretary of Commerce make specified findings of fact regarding the alleged act, policy or practice as well as other technical questions when the petition seeks relief pursuant to section 2411(a)(2). The Trade Representative shall review the allegations in the petition and, not later than 45 days after the date on which he received the petition, shall determine whether to initiate an investigation.

(b) Determinations regarding petitions.--

(1) Negative determination.--If the Trade Representative determines not to initiate an investigation with respect to a petition, he shall inform the petitioner of his reasons therefor and shall publish notice of the determination, together with a summary of such reasons, in the Federal

Register.

(2) **Affirmative determination.**--If the Trade Representative determines to initiate an investigation with respect to a petition, he shall initiate an investigation regarding the issues raised and advise the United States International Trade Commission and the Secretary of Commerce of his determination. The Trade Representative shall provide the Commission and the Secretary of Commerce with a copy of the petition and publish the text of the petition in the Federal Register and shall, as soon as possible, provide opportunity for the presentation of views concerning the issues, including a public hearing--

(A) within the ~~30~~ 120 day period after the date of the determination (or on a date after such period if agreed to by the petitioner), if a public hearing within such period is requested in the petition; or

(B) at such other time if a timely request therefor is made by the petitioner.

(C) Report by the Secretary of Commerce.--

(1) Whenever the petition requests, pursuant to subsection (a), that the Secretary of Commerce make specified findings of fact, the Secretary shall

initiate an investigation upon receipt of the petition from the Trade Representative and publish notice of such investigation in the Federal Register. The Secretary's findings shall be reported to the Trade Representative within 60 days of the date on which the notice of its investigation is published in the Federal Register.

(2) The Secretary's findings shall be based on the best information available to him at the time of his investigation. The Secretary may, however, report revised findings one year after his original report to the Trade Representative. The revisions may be based on new information not reasonably available to the proferring party at the time that it appeared before the Secretary during the course of his investigation.

(3) The Secretary shall, during the course of his investigation, provide opportunity for the presentation of views concerning the issues, including a public hearing if a timely request therefor is submitted by the petitioner. The Secretary's report, except for confidential information, shall be published in the Federal Register.

(D) All information which is properly designated and submitted in confidence for the purposes of proceedings provided for under this section shall not be disclosed to any person without the consent of the person submitting the information, unless pursuant to a protective order. The Trade Representative and the Secretary shall provide regulations for appropriate sanctions to enforce such protective orders, including disbarment from practice before the agency.

§ 2413. Consultation upon initiation of investigation

On the date an affirmative determination is made under section 2412(b) of this title with respect to a petition, the Trade Representative, on behalf of the United States, shall request consultations with the foreign country or instrumentality concerned regarding issues raised in the petition. If the case involves a trade agreement and a mutually acceptable resolution is not reached during the consultation period, if any, specified in the trade agreement, the Trade Representative shall promptly request proceedings on the matter under the formal dispute settlement procedures provided under such agreement. The Trade Representative shall seek information and advice from the petitioner and the appropriate private sector representatives provided for under section 2155 of this title and shall take into account any report submitted pursuant to section 2412 by the Secretary of Commerce in preparing United States presentations for consultations and dispute settlement proceedings.

§ 2414 Recommendations by Trade Representative

(a) Recommendations.--

(1) In general.--On the basis of the investigation under section 2412 of this title, and the consultations (and the proceedings, if applicable) under section 2413 of this title, and subject to subsection (b) of this section, the Trade Representative shall recommend to the President what action, if any, he should take under section 2411 of this title with respect to the issues raised in the petition. The Trade Representative shall make that recommendation not later than--

(A) 7 months after the date of the initiation of the investigation under section 2412(b)(2) of this title if the petition alleges only an export subsidy covered by the Agreement on Interpretation and Application of Articles VI, XVI, and XXIII of the General Agreement on Tariffs and Trade (relating to subsidies and countervailing measures and hereinafter referred to in this section as the "Subsidies Agreement");

(B) 8 months after the date of the investigation initiation if the petition alleges any matter covered by the Subsidies Agreement other than only an export subsidy;

(C) in the case of a petition involving a trade agreement approved under section 2503(a) of this title (other than the Subsidies Agreement), 30 days after the dispute settlement procedure is concluded; or

(D) ~~12~~ 6 months after the date of the investigation initiation in any case not described in subparagraph (A), (B) or (C).

(2) Special rule.--In the case of any petition--

(A) an investigation with respect to which is initiated on or after July 26, 1979 (including any petition treated under section 903 of the Trade Agreements Act of 1979 as initiated on such date); and

(B) to which the ~~12~~ 6-month time limitation set forth in subparagraph (D) of paragraph (1) would but for this paragraph apply;

if a trade agreement approved under section 2503(a) of this title that relates to any allegation made in the petition applies between the United States and a foreign country or instrumentality before the ~~12~~ 6-month period referred to in subparagraph (B) expires, the Trade Representative shall make the recommendation required under paragraph (1) with respect to the petition not later than the close of the period specified in subparagraph (A), (B) or (C), as appropriate, of such paragraph, and for purposes of such subparagraph (A) or (B), the date of the application of such trade agreement between the United States and the foreign country or instrumentality concerned shall be treated as the date on which the investigation with respect to such petition was initiated; except that consultations and proceedings under section 2413 of this title need not be undertaken with the period specified in such subparagraph (A), (B) or (C), as the case may be, to the extent that the requirements under such section were complied with before such period begins.

(3) **Report if settlement delayed.**--In any case in which a dispute is not resolved or a recommendation not forthcoming before the close of the minimum dispute settlement period provided for in a trade agreement referred to in paragraph (1)(C) (other than the Subsidies Agreement) or (1)(D), the Trade Representative, within 15 days after the close of such period, shall submit a report to Congress setting forth the reasons why the dispute was not resolved within the minimum period, the status of the case at the close of the period (including any report submitted pursuant to section 2412 by the Secretary of Commerce), and the prospects for resolution. For purposes of this paragraph, the minimum dispute settlement period provided for under any such trade agreement is the total period of time that results if all

stages of the formal dispute settlement procedures are carried out with the time limitations specified in the agreement, but computed without regard to any extension authorized under the agreement of any stage.

(b) Consultation before recommendation.--Before recommending that the President take action under section 2411 of this title with respect to the treatment of any product or service of a foreign country or instrumentality which is the subject of a petition filed under section 2412 of this title the Trade Representative, unless he determines that expeditious action is required--

(1) shall provide opportunity for the presentation of views, including a public hearing if requested by any interested person;

(2) shall obtain advice from the appropriate private sector advisory representatives provided for under section 2155 of this title, and

(3) shall take into account reports submitted, pursuant to section 2412, by the Secretary of Commerce; and

~~(3)~~ (4) may request the views of the International Trade Commission regarding the probable impact on the economy of the United States of the taking of action with respect to such product or service.

If the Trade Representative does not comply with paragraphs (1), ~~and~~ (2) and (3) because expeditious action is required, he shall, after making the recommendation concerned to the President, comply with such paragraphs.

§ 2435. Commercial Agreements

(a) * * *

(b) * * *

(1) * * *

(2) * * *

(3) * * *

(4) taking into account the provisions of ~~if the other party to the bilateral agreement is not a party to~~ the Paris Convention for the Protection of Industrial Property, provide rights for United States nationals with respect to ~~patents and trademarks in such country not less than the rights specified in such convention~~ the acquisition and enforcement of industrial property rights and the protection of the property value of proprietary data that, at a minimum, are substantially equivalent to those rights afforded such nationals in the United States;

* * *

STATEMENT OF DAVID MALSBARY, DIRECTOR OF WORLD MARKETS, MONSANTO CO.

Mr. MALSBARY. Thank you, Dale. Senator Danforth, members of the committee, I am director of markets for Monsanto Agricultural Products Co., and chair of the National Agricultural Chemicals Association's Foreign Affairs Committee.

I am appearing in behalf of Nicholas Reding, executive vice president of Monsanto, who unfortunately is ill. And he is sorry he cannot be here today as he has very strong feelings about this issue.

I would like to outline some situations where our high technology, export-oriented industry has suffered from the unfair trade practices of countries which enjoy fair treatment here.

In a number of countries, the lack of patent protection, coupled with the lack of protection of proprietary registration data, which is necessary to register agricultural chemical products for sale, creates at best unfair competition in the local market. At the worst, it can mean total exclusion of the inventor-developer from the market, while the innovation is exploited by others.

Let me give you some illustrations. The first involves the case where countries purposely encourage the creation of private manufacturing enclaves from which imitation products flow into world markets. With lack of patent protection or effective enforcement of any rights granted, local manufacturers can easily set up to produce American proprietary products. They have a ready market in many Third World countries because of the inadequate patent protection and enforcement. Further, they have the ability to obtain product registration in these countries using unprotected proprietary registration data of the American innovating company.

There are two advanced developing countries, one in East Europe and one in Asia, following this path today. Both enjoy substantial trade concessions with the United States including, respectively, MFN treatment and GSP duty-free status.

Another situation involves certain advanced LDC's which deny effective patent protection for high technology U.S. products and make provisions for their exploitation by local industry. Here it is not a question of pirate exports, but of their governments making our technology available to local nationals for exploitation for, at best, token fees. It may also mean excluding the American inventor-developer from the market altogether. Such countries often use the device of compulsory licensing of our inventions to local nationals. Such licenses can be on an exclusive basis, which excludes the U.S. developer. In some instances when a local manufacturer begins operations under a compulsory license, the border is simply closed to competition from the American producer. This policy is blatantly followed by one of our major Latin American trading partners who also enjoys GSP duty-free status.

A recent newspaper article concerning an important Asian trading partner—South Korea—which follows this policy revealed how one of our NACA companies was unable to obtain protection for an innovative product. Encouraged by local laws to foster imitations, a local firm allegedly purchased stolen technology in Europe, set up to make the product, and when they were in production, the government closed the border to the American company's product.

We believe that multilateral and bilateral agreements should provide for a substantially equivalent protection of our property rights and proprietary registration data.

We also believe that where they are abused, there should be some formal action which our Government can take to bring these unfair trade practices to the bargaining table.

Finally, there should be meaningful, credible sanctions which can be applied with the flexibility to encourage negotiations leading to resolution of the problem. Clearly, such sanctions should include the selective removal of substantial trade benefits which the countries enjoy within the United States.

I have been informed this morning that the International Anti-Counterfeiting Coalition strongly endorses the NACA proposals.

Mr. **MALSBARY.** Now I will turn this discussion over to Bob Burt of FMC Corp., who is also a member of the National Agricultural Chemicals Association Board.

Thank you.

[The prepared statement follows:]

TESTIMONY OF MR. N. L. REDING, EXECUTIVE VICE PRESIDENT
MONSANTO COMPANY, AND BOARD MEMBER,
NATIONAL AGRICULTURAL CHEMICALS ASSOCIATION (NACA)
BEFORE THE SUBCOMMITTEE ON INTERNATIONAL TRADE
OF THE SENATE FINANCE COMMITTEE
MAY 6, 1982

Thank you, Dale. I would like to outline some situations where our high technology, export-oriented industry has suffered from the unfair trade practices of countries which enjoy fair treatment here.

In a number of countries the lack of patent protection, coupled with lack of protection of proprietary registration data necessary to register agricultural chemical products so that they can be sold, creates at best unfair competition in the local market. At the worst, it can mean total exclusion of the inventor-developer from the market, while his innovation is exploited by others.

Let me give some illustrations. The first involves the case where countries purposely encourage the creation of pirate manufacturing enclaves from which imitation products flow into world markets. With lack of patent protection and effective enforcement of any rights granted, local manufacturers can easily set up to produce American proprietary products. They have a ready market in many third countries because of inadequate patent protection and enforcement and the ability to obtain product registration in those countries using proprietary American registration data. There are two advanced developing countries, one in Eastern Europe and one in Asia, following this path. Both enjoy substantial trade concessions from the U.S. including, respectively, MFN treatment and GSP Duty-Free status.

Another situation involves certain advanced LDC's which deny effective patent protection for high technology U.S. products and make provisions for their exploitation by local industry. Here, it is not a question of pirate exports, but of their governments making our technology available to local nationals for exploitation for, at best, token fees. It may also mean excluding the American inventor-developer from the market. Such countries often use the device of compulsory licensing of our inventions to local nationals. Such licenses can even be on an exclusive basis, excluding the U.S. developer. In some instances when a local manufacturer begins operations under a compulsory license, the border is closed to competition from American products. This policy is generally followed by some of our major Latin American trading partners and others. A recent newspaper article concerning an important Asian trading partner which follows this policy revealed how one of our NACA companies was unable to obtain protection for an innovative product. Encouraged by local laws to foster imitations, a local firm allegedly purchased stolen technology in Europe and set up to make the product. When they were in production, the government closed the border to the American company's exports.

We believe that multilateral and bilateral agreements should provide for substantially equivalent protection of our property rights and proprietary registration data.

We also believe that, where they are abused, there should be formal actions which the government can take to bring these unfair trade practices to the bargaining table.

Finally, there should be meaningful, credible sanctions which can be applied with flexibility to encourage negotiations and provide a fallback position when a negotiated agreement cannot be reached. Clearly, such sanctions should include the selective removal of substantial benefits which the countries enjoy in the United States.

And now I will turn this over to Bob Burt, of the FMC Corporation, who is also one of NACA's Board Members. He will address a specific problem FMC has had and briefly describe recent efforts by certain countries to weaken the Paris Convention for the Protection of Industrial Property.

Friday, March 19, 1982 23 INTERNATIONAL

Industry Patents and the Third World

A decade ago, an employe retiring from Italy's Gruppo Lepetit made a farewell visit to coworkers at the pharmaceutical company's laboratory. While there, he dropped his handkerchief into a fermentation vat. He retrieved it, pocketed it and boldly walked out, carrying with him an important secret for production of the company's major product.

Sopped up by the handkerchief was the bacterial strain used to produce an antibiotic called rifampicin, an antituberculosis drug. Lepetit, a subsidiary of Dow Chemical Co. of the U.S., alleges that, in addition to the bacteria, the employe also confessed he had stolen technical documents — everything another laboratory would need to duplicate the product.

This article is based on reports from Norman Thorpe in Seoul and James R. Schiffman in Hong Kong.

Dow says that is exactly what happened. In January, Lepetit and another Dow subsidiary, Dow Chemical Pacific Ltd., based in Hong Kong, filed separate suits in Seoul accusing one of South Korea's largest pharmaceutical companies of illegally using the rifampicin-production technology stolen from Lepetit.

Officials of the Korean company, Chong Kun Dang Corp., acknowledge use of a Swiss intermediary to obtain the production know-how but deny any wrongdoing. Chong Kun Dang is contesting both suits.

The dispute isn't expected to be settled soon. But it offers a fascinating glimpse of how Third World manufacturers sometimes indirectly acquire sophisticated technology, without which they say their countries can't attain the modernization and economic growth necessary to catch up with the developed world. The Dow case also provides an example of what Western businessmen see as the developing countries' lack of respect for the proprietary rights of inventors and for the heavy cost of research.

"Any of us are wary of bringing our latest technology into the country," says an American businessman in Seoul. Last October, U.S. Secretary of Commerce Malcolm Baldrige, on a visit to Korea, pressed the Koreans to review the patent protection they grant foreign products and processes. Patent and copyright infringement has long been a sore point for foreign companies operating in the Far East.

A Protective Ban

The suits brought by Dow also shed light on specific problems associated with doing business in Korea. Rifampicin was developed by Lepetit in the 1960s, and before Chong Kun Dang started manufacturing it, import sales in Korea had reached $4 million to $5 million per year. Then, in 1980, when Chong Kun Dang entered the market, Korea placed a ban on imports—including those of Lepetit's Korean licensees.

Lee Chang Kee, director general of the Ministry of Health and Social Affairs' drug and food affairs bureau, says bans are applied against many foreign products to protect domestic manufacturers that develop their own manufacturing technology. Dow

priate because, it says, the technology was acquired abroad.

Although Dow holds the largest equity of any foreign company in South Korea, with investments of more than $125 million, it lacked the clout to get the ban lifted. And if Dow loses this legal battle, it may find that protecting its rifampicin markets in other countries will prove more difficult, partly because the Koreans have started an export program. Chong Kun Dang says its price is competitive with Lepetit's.

The drug "is the most important pharmaceutical product" Dow has, says W.G. Davidson, commercial director for pharmaceuticals at Dow Chemical Pacific. Dow's world-wide rifampicin sales totaled $63 million in 1981.

Chong Kun Dang reported total 1981 sales of $53 million, the third largest in Korea's fiercely competitive pharmaceutical industry; the company's after-tax earnings were $3 million.

In one of the suits, Lepetit seeks an injunction against Chong Kun Dang's further use of what it claims is Lepetit technology to produce rifampicin. In the other suit, Dow Chemical Pacific seeks about $500,000 in damages from Chong Kun Dang for a profit loss resulting from the ban on rifampicin sales.

Dow's case exemplifies what Western businessmen see as the developing countries' lack of respect for the proprietary rights of inventors.

The alleged theft of Lepetit's production secret was discovered several years ago when another Italian company, Archifar S.p.A., started making the drug. Lepetit eventually traced the information leak back to the retired lab worker who, it says, confessed. Dow later acquired the new rival, and until the Korean company started making rifampicin, Dow says, there was only one other producer in the noncommunist world, Ciba-Geigy AG of Switzerland, which has a cross-licensing agreement with Lepetit.

When Chong Kun Dang applied for a license to produce rifampicin, Korean newspapers applauded the company for being only the fourth in the world to develop it. The company had been working on rifampicin since the mid-1970s, partly because Dow had never patented its production in Korea, says Chong Kun Dang's sales promotion manager, Kim Keung-Lim.

Dow, on the other hand, says it did apply for a patent but that the Korean government rejected it.

"We got Lepetit's patent specifications filed in foreign countries, and got information on specifications from professional journals," says Mr. Kim. "Then we started research in our laboratory."

Next, the company canvassed laboratories in Europe. "If you go to Europe and

vice-president Lee Young-Ho, "you can find it easily."

Using all these sources, Chong Kun Dang was able to fabricate its own rifampicin, Mr. Kim says.

But patent specifications available to the public omit many important details, says Dow's Mr. Davidson. It would be "technically impossible" to fill these gaps in only a few years, he says.

Dow officials say Chong Kun Dang obtained rifampicin technology and a strain of the fermentation bacteria used in production from Trifar S.A., a Swiss company, in 1978. Marco Celoria, an officer at Trifar, and Pierfrancesco Compana, Trifar's attorney, attest in notarized statements that Trifar purchased the technology in Brazil, that the documents were in Italian and that the origin appeared to be Lepetit.

Renegotiating a Price

Trifar officials also gave Dow copies of contracts, correspondence and other documents Trifar had exchanged with Chong Kun Dang, all of which, Dow says, indicates the Koreans were willing to pay Trifar $300,000. Because of technical problems that cropped up, as well as a claimed inability to get government approval of the $300,000 payment, Mr. Compana, the Trifar attorney, says Chong Kun Dang haggled over price and finally paid $195,000 in two installments through another Swiss company, Salca S.A.

Dow also accuses Chong Kun Dang and five of its officers of violating Korean foreign-exchange laws when the alleged purchase of Lepetit's technology was made in Europe. The Korean government requires approval to obtain foreign exchange before a company can buy technology abroad, but Dow says Chong Kun Dang circumvented this procedure.

But while Chong Kun Dang's Mr. Lee acknowledges that Trifar was the source of the technology and the bacterial sample, he denies that the company actually paid anything to Trifar. "The technology they gave us wasn't as good as we expected," he said. "So we didn't pay them."

Mr. Lee also denies that the rifampicin technology originally belonged to Lepetit. "Even if our technology is coincidentally the same as Lepetit's, what is (Dow's) case? . . . They have no patent here," he says.

STATEMENT OF ROBERT N. BURT, VICE PRESIDENT, FMC CORP.

Mr. BURT. Thank you, Dave.

Mr. Chairman, and members of the International Trade Subcommittee, my name is Robert N. Burt. I am a vice president of FMC Corp., a multinational diversified producer of machinery and chemicals. I am also a member of the board of directors of the National Agricultural Chemicals Association, and serve as vice chairman of the International Group of National Associations of Manufacturers of Agricultural Products, commonly known as GIFAP. As general manager of FMC's Agricultural Chemical Group, I am responsible for 150 million dollars' worth of U.S. exports annually.

My purpose this afternoon is to highlight a particular problem faced by FMC, and how it relates to this trade legislation. As Senator Heinz well knows, FMC has been faced with a very specific and vexing problem over the last several years. In 1977, we became aware that a Hungarian state-owned trading company named Chemolimpex was selling an FMC developed and patented pesticide with the trade name "Furadan," in among other places, Brazil. This was in spite of the fact that FMC had already established a patent right in Brazil for Furadan established before the Hungarians entered the Brazilian market. This patent is valid until 1985.

Now, 5 years later, we believe we are close to an agreement with the Hungarians. But those intervening years have cost the U.S. economy approximately $12 million in exports with concomitant loss in jobs and have cost FMC considerable profits. It is useful to examine why it has taken 5 years to resolve this matter despite the continuing support of this committee and by the executive branch of the Government.

In my opinion, it has taken 5 years because adequate remedies for the executive branch to gradually escalate the pressure on a foreign patent violator do not exist. The only remedy that the Government had vis-a-vis Hungary was to revoke Hungary's MFN status—a move that would negatively impact to a significant degree overall foreign policy toward Hungary, and penalize other American companies who had entered into commercial arrangements with Hungary based on the MFN treaty. Only the combination of bad publicity, the continued strong action that this committee insisted on, and especially the introduction of Senate Resolution 153 in June 1981 by Senator Heinz and others on this committee brought the Hungarians to the negotiating table with a serious commitment to resolve this issue. But it has taken 5 years.

Under current circumstances we find ourselves afforded no real protection on patent infringement for a single product in which we must invest $35 million in research and development before bringing it to the market.

To try and rectify these many problem areas, our legislative proposal mentioned earlier by Dr. Wolf in his opening statement would help U.S. industry deal with a future problem of the Hungary kind in the following ways:

One, it would provide statutory recognition of the importance of industrial property in international commercial relations.

Two, it would set minimum standards for industrial property rights to which international trade and commercial agreements negotiated by the United States should conform.

Three, it would help shorten the timeframe in which the facts of a dispute over an industrial property right could be collected and presented in official form by the Office of the U.S. Trade Representative. And it would require response and action by the U.S. Government in a specified time period.

Four, it would expand significantly the variety of sanctions open to the United States so that our penalties would fit their crimes. That is, it would not need to be an all or nothing solution regarding the revocation of MFN.

Five, it would produce early government-to-government negotiations to expedite what has heretofore been a slow moving and frustrating dialog between a U.S. company and a foreign government, and its state-owned chemical company.

I firmly believe that had our recommendation been in place 4 years ago, the U.S. Government support, together with our own negotiating efforts, would have produced an agreement in the Hungarian matter in a much shorter period of time.

Therefore, in conclusion, we urge our proposals be included in the committee's trade legislation. By doing so we will send a message to patent violators worldwide, and go a long way to affording protection for U.S. industrial property, and the know-how and jobs that are inextricably attached to that property.

Thank you, Mr. Chairman. We will now answer any questions you may have on our combined testimony.

[The prepared statement follows:]

STATEMENT OF ROBERT N. BURT, VICE PRESIDENT FMC CORPORATION, AND MEMBER, BOARD OF DIRECTORS, NATIONAL AGRICULTURAL CHEMICAL ASSOCIATION (NACA) BEFORE THE SENATE FINANCE SUBCOMMITTEE ON INTERNATIONAL TRADE,

MAY 6, 1982

Mr. Chairman and members of the International Trade Subcommittee, my name is Robert N. Burt. I am a Vice President of FMC Corporation, a multinational diversified producer of machinery and chemicals with sales in 1981 of $3.4 billion in the United States and 150 other countries. I am also a member of the Board of Directors of the National Agricultural Chemicals Association and serve as Vice Chairman of the International Group of National Associations of Manufacturers of Agrichemical Products (GIFAP). As General Manager of FMC's Agricultural Chemical Group, I am responsible for $150 million worth of U.S. exports annually.

Mr. Chairman, my purpose here this afternoon is to highlight the particular problem faced by FMC and how it relates to this trade legislation. As Senator Heinz well knows, FMC has been faced with a very specific and vexing problem over the last five years.

In 1977, FMC became aware that a Hungarian state-owned trading company named Chemolimpex, was selling an FMC developed and patented pesticide, with the trade name Furadan, in, among other places, Brazil. This was in spite of the fact that FMC had already established a patent right in Brazil for Furadan--established before the Hungarians entered the Brazilian market. The patent is valid until 1985.

Now, five years later, we believe we are close to an agreement with the Hungarians, but those intervening five years have cost the U.S. economy approximately $12 million in exports with concomitant loss in jobs and have cost FMC considerable profits. It is useful to examine why it has taken five years to resolve this matter despite the continued support of this Committee and occasionally by the Executive Branch of the government.

It is appropriate to ask why this problem still persists after five years of industry and government effort to resolve it. In my opinion, it has taken five years because adequate remedies for the Executive Branch to gradually escalate the pressure on a foreign patent violator do not exist. The only remedy that the government has had vis-a-vis Hungary was to revoke the Hungarians' MFN status--a move that would negatively impact, to a significant degree, overall foreign policy towards Hungary, and penalize other American companies who had entered into commercial arrangements with Hungary based on the MFN treaty. Only the combination of bad publicity, the continued strong action that this Committee insisted on, and especially the introduction of S. Res. 153 in June of 1981 by Senator Heinz and others brought the Hungarians to the negotiating table with a serious commitment to resolve this issue. But it has taken five years!

Mr. Chairman, under current circumstances we find ourselves afforded no real protection against patent infringement for a single product in which we have invested $35 million in research, development, marketing, and administrative costs.

I would add that FMC is presently investing $30 million in the expansion of its agricultural chemical research facility in Princeton, New Jersey. This expansion which will create a research facility of over 50,000 square feet, represents the largest single investment in chemical technology in FMC's history. In order to make investments of this magnitude, which create needed jobs and develop new technological strengths in the United States, we need to have assurances that a strong, world-wide patent system will exist to protect such investments.

Let me emphasize how difficult it is to develop new products in this field. In the laboratory we must synthesize approximately 15,000 compounds to yield, on average, only one successful product. Development of that one success may require as much as 8 years from the point of discovery. Then, because these substances must undergo a lengthy testing and registration procedure in virtually every country where they are offered for sale, the life of the relevant patent is frequently more than half over before the product reaches the market place. Prolonged patent litigation can extend a dispute over a patent up to and beyond the end of the life of the patent. This is particularly damaging to the patentee where, as is frequently the case, there are no provisions for stopping infringement during litigation. Clearly the loss of incentive to develop such products is substantial if foreign producers are allowed to copy this technology, and at the development and market opportunity expense of U.S. firms.

This brings me to the thrust of my testimony and the reason why we think the proposed legislation needs to address problems such as ours.

The international patent system is a keystone of the international commercial system where high-technology products are concerned. But the present system fails in the kinds of bilateral situations that I have cited, and is under attack from a multinational perspective.

As you may know, an attempt is being made in the context of the World Intellectual Property Organization (WIPO) in Geneva to do away with significant aspects of patent protection afforded by the Paris Industrial Property Convention. The effort would give developing countries, in particular, a free reign to abuse the legitimate patent rights of companies in the industrialized nations where the world's research and development does indeed take place. The negotiations on this will culminate in November.

Our proposal, as an addition to your legislation, would deter the WIPO exercise by posing the threat of a U.S. remedy if a developing country were to make a selective denial to market access through the patent system. This issue has never been dealt with under the rubric of the General Agreement for Tariffs and Trade (GATT) and this legislation would fill a definite vacuum in the GATT system.

To try to rectify these many problem areas, our legislative proposal mentioned earlier by Dr. Wolf in his opening statement would help U.S. industry deal with a future problem, of the Hungarian kind, in the following ways:

1. It would provide statutory recognition of the importance of industrial property in international commercial relations.
2. It would set minimum standards for industrial property rights to which international trade and commercial agreements negotiated by the U.S. should conform.
3. It would help shorten the time frame in which the facts of a dispute over an industrial property right issue would be collected and presented in official form by the office of the U.S. Trade Representative, and it would require response and action by the U.S. government in a specified time period.

4. It would expand significantly the variety of sanctions open to the U.S. so that "our penalties would fit their crimes." That is, it would not need to be an all or nothing solution regarding the revocation of MFN.
5. It would produce early government-to-government negotiations to expedite what has heretofore been a slow moving and frustrating dialogue between a U.S. company and a foreign government and its state-owned chemical company.

I firmly believe that had our recommendations been in place four years ago, the U.S. government support, together with our own negotiating efforts, would have produced an agreement in our Hungarian matter in a much shorter period of time.

Therefore, in conclusion, we urge our proposals be included in the Committee's trade legislation. By doing so we will send a message to patent violators worldwide and go a long way to affording protection for U.S. industrial property and the know-how and jobs that are inextricably attached to the property.

Thank you, Mr. Chairman.

SENATE RESOLUTION 153—SUBMISSION OF A RESOLUTION TO REQUIRE FULL ADHERENCE TO U.S. TRADE AGREEMENTS

Mr. HEINZ (for himself, Mr. DANFORTH, Mr. BAUCUS, Mr. SYMMS, Mr. GRASSLEY, and Mr. DURENBERGER) submitted the following resolution, which was referred to the Committee on Finance.

S. RES. 153

Resolved, it is the sense of the Senate that the President take expeditious action, through all available channels, to resolve the long-standing dispute over the recognition and protection of industrial property rights provided for in Article V of the Agreement on Trade Relations between the United States and Hungary and more specifically provided for in an Agreed Minute signed by the parties on June 11, 1979. If a final settlement of the dispute is not reached on an expedited basis, it is the sense of the Senate that the President, pursuant to Section 406(c) of the Trade Act of 1974, should suspend the extension of nondiscriminatory treatment to the Hungarian People's Republic as provided in the aforementioned Agreement, until settlement is reached.

ADHERENCE TO TRADE AGREEMENTS

● Mr. HEINZ. Mr. President, on June 2, 1981, the President notified Congress that he had made the necessary determinations for the 3-year extension of the commercial agreement with the Hungarian People's Republic. The resolution I am submitting today calls for the end of a long-standing trade dispute that flies in the face of the rules embodied in that commercial agreement. I am specifically referring to the Hungarian practice, for over 3 years now, of hindering the patentability in Hungary of agricultural chemicals invented by our companies, and the blatant disregard of the Hungarians for valid patent rights held by U.S. chemical manufacturers in third countries.

The necessity of this resolution is clearly evident from the history of this problem. In recent years, Hungary has been relying heavily on its relatively advanced chemical industry to generate sales to hard currency markets in order to close its trade gap with the West. In order to permit Hungarian production of new agricultural chemicals that ultimately are sold in large quantities in foreign markets, patents on such products in Hungary are hindered and often not issued. This results in the production of agricultural chemicals in Hungary that, in other parts of the world are protected by valid patent rights. These products, then, are exported to third countries where, in many instances, the Hungarian product is passed off as a U.S. company's product or infringes a U.S. company's patent.

Such sales are often in small quantities that are difficult to detect. Even where detected, patent infringement litigation is lengthy, complex and extremely expensive. Consequently, resolving the problem through patent litigation by each [illegible] pany in each country where there [illegible] an infringing sale, is not practical. The Hungarians know this and have concluded that they can, with impunity, continue to ignore not only U.S. companies' industrial property rights but disregard the provisions of our trade agreements with them.

Examples are numerous of Hungarian practices that derogate from their trade commitments to us. Virtually the entire product catalogue published in 1979 by Chemolimpex, the Hungarian export trading organization, contained U.S.-origin proprietary agricultural chemical technology. In many instances the Hungarian product was identified with the counterpart U.S. patented products that was copied. Hungarian sales of infringing products have been documented in such countries as Tanzania, Greece, Spain, Italy, Turkey, Brazil, and the Netherlands. Companies such as DuPont, FMC, and Monsanto have at various times been adversely affected by these Hungarian unfair trade practices.

The longest standing, and perhaps most costly problem, has been Hungarian exports to Brazil of a product that infringes FMC's valid patents in that country. As early as 1977, FMC Corp., one of this country's leading agricultural chemical exporters, became aware of the fact that the Hungarian trading company, Chemolimpex, was selling a pesticide it called Furadan in, among other palaces, Brazil. The problem was that FMC had already established a patent right in Brazil for the pesticide it trade named Furadan before the Hungarians entered the Brazilian market. Notwithstanding consultations and law suits, the problem had not been resolved when the United States-Hungarian commercial agreement was presented to Congress in 1978 for its approval. Three years later, and numerous good faith efforts on the part of FMC to negotiate a settlement with the Hungarians have led to nothing. The Hungarians continually bring the talks to the brink, and then stall when finalization of an agreement is sought.

The Finance Committee reviewed the overall agricultural chemical problem in 1978 when it was reviewing the entire United States-Hungarian trade agreement. Included in the committee report on the agreement was the following important passage:

> Notwithstanding the committee's favorable report of the resolution to approve the agreement, the committee is particularly concerned about the full and faithful execution of that part of the trade agreement relating to industrial property rights. The committee has been informed by the American agricultural chemicals industry of certain past practices of firms and agencies in Hungary which will not be in accord with the spirit, if not the letter, of the agreement. These include the granting of patents to Hungarian firms while denying or failing to act on the applications of American firms. Furthermore, the committee understands Hungarian firms are selling agricultural chemicals protected by American owned patents in third countries, countries where the American chemical companies have patent protection, in a manner such that the American firms find it practically impossible to protect their industrial property rights. *The committee expects that such practices will no longer take place under this new, mutual undertaking by the Government of Hungary and that of the United States. The Committee will carefully monitor this problem during the life of the agreement and will again review it at the time for renewal and may recommend further action, if necessary.* (Emphasis added.)

By June 1979 the problem had not been solved. Thus, representatives of Hungary and the United States met as a Joint Economic and Commercial Committee to seek an agreement that was intended to resolve, once and for all, the industrial property rights problem. The result was an agreed minute which stated, in paragraph 4:

> Each side agrees that, in keeping with the spirit of the harmonious and cordial relations signified by the Trade Agreement, the companies of both sides are obliged to respect in their activities the relevant laws and regulations on industrial property rights, held by the nationals or residents of the other side (including in third world countries) and not assist others to infringe these rights.

Senate hearings the following month, however, with Hungarian actions rather than minute words as a guide, made clear that little real progress had occurred.

Following these hearings, the Finance Committee discussed the matter further in executive session. Based on my analysis of the problem, I concluded "that the Hungarians really are being egregious and not acting in good faith." Senator DANFORTH added:

> Attempts have been made to negotiate in good faith with Hungary. Nothing has come of it.

The result of the committee's hearings and deliberations on this matter was a letter dated August 23, 1979, in which then-Chairman LONG outlined the continuing problem to Secretary of Commerce Kreps. On behalf of the committee, the Chairman stated that the disputes "should be resolved expeditiously within the letter and spirit of the commercial relations."

On July 21, 1980, approximately 1 year later, Senator DANFORTH asked a Commerce Department official if the problem continued to exist. The response:

> That is generally correct. I would say the progress has been more than a little, but it has not been the complete resolution of the problem.

Today, on the eve of the third year in which we have had a commercial agreement with the Hungarians, and the second year in which we have had an explicit agreement to honor our companies' respective industrial property rights in third countries, what do we have? After 3 years of earnest expressions of concern by the Finance Committee and diplomatic activities by the executive branch, what have we accomplished? The disappointing answer is—renewal of the United States-Hungarian commercial agreement for 3 more years with no satisfactory solution of the industrial property rights problem in sight.

The resolution I submit today is timely and necessary. Timely because, as stated in the Finance Committee report in 1978, if the problem is not resolved by the time the agreement is to be renewed, the committee will consider further action to put this problem to rest. Necessary, ecause the blatant disregard of our international trade agreements and the ights they seek to protect are a matter f principle that cannot be left to atrophy in negotiations that continue ad nauseum. Moreover, the Hungarians must not be allowed to misinterpret and misconstrue the legal and constitutional authorities available not only to the Executive, but Congress, in regulating trade with foreign nations and, more specifically, countries with nonmarket economies. The Hungarians must not be permitted to believe that simply because the commercial agreement was not terminated they now have a license to continue, with impunity, the derogations of the trade agreements they have with this country.

Adoption of this resolution will communicate not only to the Hungarians, but the executive branch, this Chamber's firm commitment to requiring full adherence to our trade agreements. It calls upon the President to take expeditious action, through all possible channels, to finally resolve the dispute. If that does not succeed, it expresses the sense of the Senate that the Executive suspend, pursuant to section 404(c) of the Trade Act of 1974, the operation of the agreement, pending resolution of this long-standing problem.

Mr. President, what was a sore spot in our trade relations with Hungary 3 years ago has now developed into a major wound to the principle of respect for industrial property rights and trade commitments. Three years ago, it was anticipated that the problems would be quickly resolved and therefore, did not interfere with an expansion of trade commitments between our two countries. Today, however, the problem remains, and has grown in magnitude to the extent that it now serves to justify a hard reassessment of our trade relations with the Hungarians and the lack of good faith that they have demonstrated in this crucial subject of industrial property rights.●

AMENDMENTS SUBMITTED FOR PRINTING

DEPARTMENT OF STATE AUTHORIZATION ACT

AMENDMENT NO. 78

(Ordered to be printed.)

Mr. DURENBERGER (for himself, Mr. LEAHY, Mr. DOLE, Mr. HOLLINGS, Mr. HART, Mr. RIEGLE, Mr. BAUCUS, Mr. BENTSEN, Mr. BIDEN, Mr. BRADLEY, Mr. BUMPERS, Mr. CRANSTON, Mr. DODD, Mr. HUDDLESTON, Mr. INOUYE, Mr. LEVIN, Mr. KENNEDY, Mr. METZENBAUM, Mr. MITCHELL, Mr. PELL, Mr. PRYOR, Mr. PROXMIRE, Mr. TSONGAS, Mr. WILLIAMS, Mr. ZORINSKY, Mr. ROTH, Mr. MATHIAS, Mr. GORTON, Mr. COHEN, Mr. D'AMATO, Mr. DANFORTH, Mr. HATFIELD, Mr. ANDREWS, and Mr. CHAFEE, proposed an amendment to the bill (S. 1193) to authorize appropriations for fiscal years 1982 and 1983 for the Department of State, the International Communication Agency, and the Board for International Broadcasting, and for other purposes.

REGULATORY REFORM ACT

AMENDMENT NO. 73

(Ordered to be printed and referred to the Committee on Governmental Affairs and the Committee on the Judiciary, jointly, pursuant to the order of April 29, 1981.)

Mr. DANFORTH (for himself, Mr. CHILES, Mr. NUNN, Mr. ROTH, Mr. PERCY, Mr. STEVENS, Mr. RUDMAN, Mr. MATTINGLY, Mr. COHEN, and Mr. SIMPSON) submitted an amendment intended to be proposed by them to the bill (S. 1080) to amend the Administrative Procedure Act to require Federal agencies to analyze the effects of rules to improve their effectiveness and to decrease their compliance costs, to provide for a periodic review of regulations, and for other purposes.

● Mr. DANFORTH. Mr. President, together with Senators CHILES, NUNN, ROTH, PERCY, STEVENS, RUDMAN, MATTINGLY, COHEN, and SIMPSON, I am today submitting an amendment to S. 1080, the Regulatory Reform Act. The purpose of the amendment is to make clear that no appropriated funds may be used by agencies to pay the expenses of persons intervening or participating in agency proceedings, except as expressly authorized by statute.

Mr. President, whatever the merits may be of providing tax dollars to private parties to intervene in agency proceedings—and in my opinion the merits are quite hard to find—there is no merit in allowing regulatory agencies to decide—on their own—whether interventions should be publicly funded. This amendment makes clear that no tax dollars can be provided to pay the expenses of intervenors unless an agency has express statutory authority to do so.

Authorization now exists for a handful of programs only, but agencies from time to time have sought to fund such activities on their own—on the basis of implied grants of authority. President Carter went so far as to encourage agencies to establish intervenor funding programs if an implied grant of authority could be found, and the General Accounting Office has repeatedly maintained, even in the face of a Circuit Court of Appeals decision to the contrary, that an implied grant of authority is sufficient to authorize such payments.

I disagree. Given the controversial nature of intervenor funding programs and the serious potential for abuse in disseminating public funds to private parties, the decision to make such payments should not be made by administrative agencies on the basis of implied authority. If public funds are going to be disseminated to private parties, they should be disseminated on the basis of clear, unequivocal statutory authority—or not at all.

That is what this amendment does. It prohibits the use of appropriated funds to pay the expense of persons participating or intervening in agency proceedings, except as expressly authorized by statute. The terms "participating" and "intervening" are used advisedly, since the terms are often used interchangeably, and since funds are sometimes provided to persons to "participate," though not necessarily to "intervene," in agency proceedings. It is the intent of this amendment to avoid such nice questions of law as when "participation" becomes "intervention."

Under this amendment, if any funds are to be provided to private persons to participate in agency proceedings, there must be express statutory authority to do so. The exceptions are carefully drawn and are meant to be read narrowly. Excepted are payments under the Equal Access to Justice Act, the public participation program established under the Magnuson-Moss amendments to the Federal Trade Commission Act, the "offeror" program under section 7 of the Consumer Product Safety Act, a program to provide funding to public participants in State Department proceedings under the Department of State's authorizing legislation, and payments authorized for proceedings under the Toxic Substances Control Act. (In the past, efforts were made to extend the authority granted under the Toxic Substances Control Act to proceedings under any act administered by the Environmental Protection Agency. This amendment is intended to prohibit such an expansive reading of the Toxic Substances Control Act.)

Finally, the amendment excepts payments "otherwise * * * expressly authorized by statute." This provision is intended to be narrowly construed. It is intended to permit, for example, the reimbursement of per diem expenses and travel to witnesses where expressly authorized, or the payment of expenses to members of advisory committees where authorized by statute.

This amendment may be characterized by some as an amendment to kill intervenor funding programs. I have never disguised my dislike for intervenor funding, but the fact of the matter is that the purpose of the amendment is not so much to stop unauthorized intervenor funding programs as it is to assert the prerogative of Congress to exercise control over the operation of such programs.

I am pleased to be joined in offering it by no less than eight members of the Governmental Affairs Committee, giving the amendment majority support in the committee, and by my good friend on the Judiciary Committee, Senator SIMPSON. I am pleased to say that the administration supports the amendment. I hope that others of my colleagues will find it worthy of support.

DEPARTMENT OF JUSTICE AUTHORIZATION ACT

AMENDMENT NOS. 74 AND 75

(Ordered to be printed and to lie on the table).

Mr. CHILES (for himself, Mr. HUDDLESTON, Mr. BENTSEN, and Mr. HOLLINGS) submitted two amendments intended to be proposed by them to the bill (S. 951) to authorize appropriations for the purpose of carrying out the activities of the Department of Justice for fiscal year 1982, and for other purposes.

Senator **Danforth**. Do you have any idea how many claims per year would be filed?

Mr. **Burt**. We do not think it would be very many because the countries that are causing the problems tend to be the same countries. But I think the mere fact that such legislation existed would tend to reduce the amount of problems considerably.

Senator **Danforth**. And it's your view that right now you don't have a recourse in our own Government?

Mr. **Burt**. That's true.

Senator **Danforth**. There's not much of anything that can be done?

Mr. **Burt**. In a pragmatic sense, yes, sir.

Senator **Danforth**. Senator Heinz.

Senator **Heinz**. Mr. Chairman, I would just like to ask—given the difficulties where one company steals patents and lends it to somebody in another country for use for that country—is there anything we can do?

Mr. **Wolf**. We should be able to, if each of the countries will treat patent rights in their own countries as we treat patent rights in the United States.

Senator **Heinz**. Well, in the case of the hypothetical example, the countries, indeed, are taking advantage of the others. Who do you go after?

Mr. **Wolf**. That's certainly one of the current problems that we have had. For instance, you have to go after both countries really. Both countries. You really have to, I think.

Senator **Heinz**. The other hand is in the case of the bill. Is it genuinely appropriate to go after them?

Mr. **Wolf**. We certainly would in the United States, Senator Heinz, if the patent were being violated in the United States. Then it would go to the United States courts and we would solve the problem in the United States even though it appeared in some third country.

Mr. **Burt**. But in answer to your question, I think it would be difficult to go against Brazil in this case because we are following the legal remedies in the country of Brazil The problem was that we filed under their legal system 3 or 4 years ago. We have yet to get our first decision out of the court. Any appeal will certainly take it beyond the patent term anyway. In the meantime, the damage is being done because there is no way that we can cease the import of the counterfeit product. And, therefore, I think it is more important to go after the country of origin. But that doesn't particularly answer your question because there really wasn't a lending of a patent in this particular case. In our case, it was clear we should go after the country of origin.

Senator **Heinz**. Thank you.

Senator **Bentsen**. There is obviously a problem with that. A serious one. You have got your International Commission on Patent Protection, don't you? If you have some negotiations taking place at the present time, what is the status of that?

Mr. **Burt**. You are speaking of the Paris convention?

Senator **Bentsen**. That's right.

Mr. **Burt**. And there are the thoughts that there are some countries around the world who will make these less than they are today. And it's a very serious negotiating problem as we see it because many of the countries would not respect patent rights at all, or would respect them for such a short period of time that by the time we got an agrichemical on the market, the patent would be out.

Senator **Bentsen**. So the net result would be a major reduction in research and development?

Mr. **Burt**. No question.

Senator **Bentsen**. Because you wouldn't get a payoff for it.

Mr. **Burt**. All of the things all of us are talking about is the willingness of our companies to invest the amount of money that it takes to make a new invention. And this is what all of us do. We spend a lot of money doing that. But if we can't protect it as we deliver that product to the world, then you can afford to spend less money, and there will be less innovation in the United States

Senator **Bentsen**. Thank you very much.

Senator **Danforth**. Gentlemen, thank you very much. The next witness is Mr. Spencer.

STATEMENT OF EDSON W. SPENCER, CHAIRMAN AND CHIEF EXECUTIVE OFFICER, HONEYWELL, INC., REPRESENTING THE EMERGENCY COMMITTEE FOR AMERICAN TRADE

Mr. **Spencer**. Mr. Chairman, and members of the subcommittee, I am very pleased to be with you and to testify on behalf of the Emergency Committee for American Trade or ECAT, as you know it. I am Edson Spencer, chairman and chief executive officer of Honeywell. I have lived and worked abroad for 10 years, including 2 years on a Rhodes scholarship in England, 3 years working for a company in Venezuela, 5 years working for a company which I managed, the Joint Venture in Japan. I also served for 2 years with four Japanese counterparts and three other Americans on the Japan-United States Economic Relations Group, which you may have heard of as the "Wise Men's Group," appointed by President Carter, and the late Prime Minister Ohera.

The members of ECAT have carefully examined the reciprocity issue. I believe that much of the current debate about reciprocity is fueled by the United States being lax in seeking enforcement available to us of our own trading rights, both under the GATT and domestic statutes. ECAT's examination has led us to the conclusion that there already exists a wide variety of international trade statutes on the books that provide necessary authorities to deal with many current trade problems and to secure more open market access for U.S. goods abroad.

The gaps that we see conspicuously absent in our domestic laws relate to international investment and international trade and services, gaps that could be filled by legislation. The concept of reciprocity is nothing new. It has been a basis of U.S. trade policy since the original Reciprocal Trade Agreements Act of 1934. It's been based on the principle that countries through trade liberalizing negotiations should have fair and nondiscriminatory access to each other's markets for products they produce competitively. Now under this multilateral concept of reciprocity, the United States, over the years, has given and received equivalent tariff concessions and equivalent volumes of its imports and exports. In the process, world tariffs among the industrial countries have been lowered substantially and international trade has flourished. Now that tariffs are down, nontariff barriers to trade are attracting our attention and the standards of reciprocity are being discussed.

In the case of the nontariff barrier codes recently concluded in the Tokyo round, a measure of reciprocity would develop through the common undertaking of code signatories to abide by code rules.

While there are apparently elements of equity in concepts of reciprocity currently being discussed, there are also a number of risks that we believe outweigh any possible benefits.

First, if reciprocity is thought of in bilateral terms or is worse yet thought of as sectoral or product balancing between two nations, it ignores the multinational trade system that has flourished since World War II.

Senator **Danforth**. Do you know anybody who——

Mr. **Spencer**. No. And I was very pleased to hear Senator Heinz's observations earlier when he said that. I am very pleased to hear that because the definition is the critical thing in using the word.

Trade balances naturally shift over time. That's a fact we have to observe.

We've got to take into account the fact that other economic transactions such as investment flows and trade and service between countries affect our payment balance.

Fourth, if the balancing is accomplished through unilateral actions outside the bounds of international rules then the risk of similar counter measures being applied by affected countries is real.

Fifth, bilateral balancing could lead to a downward spiral of international trade to the detriment of all countries.

And, sixth, we have got to recognize that there are remedies already available to us under GATT, and some of our existing laws.

If Congress should decide to enact new trade legislation, we have several suggestions that are summarized in detail in the prepared statement that we have provided the committee for inclusion in the formal hearing record.

Drawing out some of the helpful provisions of the reciprocity bill, ECAT would be prepared to support trade legislation as follows:

Legislation for the compilation of an inventory of foreign barriers to U.S. trade services and investment together with a program of action to alleviate or eliminate such barriers. The listing of similar U.S. barriers should also be undertaken.

For authority for the President under sections 301 to 304 of the Trade Act to negotiate on foreign direct investment subject to appropriate safeguards, as well as for a Presidential mandate to negotiate bilateral and multilateral investment agreements.

For the Presidential authority to negotiate for improved access for international trade in services.

And, finally, for a limited Presidential authority to negotiate tariff changes, primarily in order to alleviate tariff disparities between the United States and other countries in the high technology and other areas.

Thank you very much for listening to our views.

Senator **Danforth**. Thank you.

[The prepared statement follows:]

STATEMENT OF MR. EDSON W. SPENCER ON BEHALF OF THE EMERGENCY COMMITTEE FOR AMERICAN TRADE
SENATE FINANCE TRADE SUBCOMMITTEE
HEARINGS ON RECIPROCITY BILLS

May 6, 1982

Mr. Chairman, I am pleased to be with you today on behalf of the Emergency Committee for American Trade, or ECAT. I am Edson Spencer, and I'm chairman and chief executive officer of Honeywell Inc. I have worked and lived abroad for ten years, including three years in Venezuela, five years in Japan where I ran a joint venture company and served as Honeywell's Far East regional manager, and two years as a Rhodes Scholar at Oxford University. I am one of four Americans who served for two years with four Japanese counterparts on the Japan-United States Economic Relations Group--which became known as the Wise Men's Group--that was appointed by former President Carter and the late Prime Minister Ohira to examine long-term aspects of the bilateral economic relationship.

The members of ECAT have carefully examined the reciprocity issue. I believe that much of the current debate about "reciprocity" is fueled by the United States being lax in seeking enforcement available to us of our own trading rights under both the GATT and domestic statutes. ECAT's examination has led us to the conclusion that there already exists a wide variety of international trade statutes on the books that

PROVIDE NECESSARY AUTHORITIES TO DEAL WITH MANY CURRENT TRADE PROBLEMS AND TO SECURE MORE OPEN MARKET ACCESS FOR U.S. GOODS ABROAD. THE GAPS THAT WE SEE CONSPICUOUSLY ABSENT IN OUR DOMESTIC LAWS RELATE TO INTERNATIONAL INVESTMENT AND INTERNATIONAL TRADE IN SERVICES--GAPS THAT COULD BE FILLED BY LEGISLATION.

THE CONCEPT OF RECIPROCITY IS NOTHING NEW, AND HAS BEEN A BASIS OF U.S. TRADE POLICY SINCE THE ORIGINAL RECIPROCAL TRADE AGREEMENTS ACT OF 1934. IT HAS BEEN BASED ON THE PRINCIPLE THAT COUNTRIES THROUGH TRADE LIBERALIZING NEGOTIATIONS SHOULD HAVE FAIR AND NON-DISCRIMINATORY ACCESS TO EACH OTHER'S MARKETS FOR PRODUCTS THEY PRODUCE COMPETITIVELY. UNDER THIS MULTILATERAL CONCEPT OF RECIPROCITY THE UNITED STATES OVER THE YEARS HAS GIVEN AND RECEIVED EQUIVALENT TARIFF CONCESSIONS ON EQUIVALENT VOLUMES OF ITS IMPORTS AND ITS EXPORTS. IN THE PROCESS, WORLD TARIFFS AMONG THE INDUSTRIAL COUNTRIES HAVE BEEN LOWERED SUBSTANTIALLY AND INTERNATIONAL TRADE HAS FLOURISHED.

NOW THAT TARIFFS ARE DOWN, NONTARIFF BARRIERS TO TRADE ARE ATTRACTING OUR ATTENTION, AND NEW STANDARDS OF RECIPROCITY ARE BEING DISCUSSED. IN THE CASE OF THE NONTARIFF BARRIER CODES RECENTLY CONCLUDED IN THE TOKYO ROUND, A MEASURE OF RECIPROCITY WAS DEVELOPED THROUGH THE COMMON UNDERTAKING OF THE CODE SIGNATORIES TO ABIDE BY CODE RULES. IN THE CASE OF THE INTERNATIONAL PROCUREMENT CODE, FOR EXAMPLE, RECIPROCITY MEANS EQUIVALENT COMPETITIVE OPPORTUNITY FOR BOTH FOREIGNERS AND CITIZENS OF A COUNTRY TO BID FOR ITS GOVERNMENT CONTRACTS THAT ARE SUBJECT TO THE CODE.

WHILE THERE APPARENTLY ARE ELEMENTS OF EQUITY IN CONCEPTS OF RECIPROCITY CURRENTLY BEING DISCUSSED, THERE ARE ALSO A NUMBER OF RISKS THAT WE BELIEVE OUTWEIGH ANY POSSIBLE BENEFITS.

FIRST, IF RECIPROCITY IS THOUGHT OF IN BILATERAL TERMS, OR IS, WORSE YET, THOUGHT OF AS SECTORAL OR PRODUCT BALANCING BETWEEN TWO NATIONS, IT IGNORES THE MULTINATIONAL TRADE SYSTEM THAT HAS FLOURISHED SINCE WORLD WAR II.

SECOND, IT IGNORES THE FACT THAT TRADE BALANCES NATURALLY SHIFT OVER TIME.

THIRD, DOES NOT TAKE INTO ACCOUNT SUCH OTHER ECONOMIC TRANSACTIONS AS INVESTMENT FLOWS AND TRADE IN SERVICE BETWEEN COUNTRIES.

FOURTH, IF THE "BALANCING" IS ACCOMPLISHED THROUGH UNILATERAL ACTIONS OUTSIDE THE BOUNDS OF INTERNATIONAL RULES, THEN THE RISK OF SIMILAR COUNTERMEASURES BEING APPLIED BY AFFECTED COUNTRIES IS REAL.

FIFTH, BILATERAL BALANCING COULD LEAD TO A DOWNWARD SPIRAL OF INTERNATIONAL TRADE TO THE DETRIMENT OF ALL COUNTRIES.

SIXTH, IT IGNORES THE REMEDIES ALREADY AVAILABLE TO US UNDER GATT AND OUR EXISTING LAWS.

SHOULD THE CONGRESS DECIDE TO ENACT NEW FOREIGN TRADE LEGISLATION, WE HAVE SEVERAL SUGGESTIONS THAT ARE SUMMARIZED IN THE PREPARED STATEMENT THAT WE HAVE PROVIDED THE COMMITTEE FOR INCLUSION IN THE FORMAL HEARING RECORD. DRAWING ON SOME OF THE HELPFUL PROVISIONS OF THE "RECIPROCITY" BILLS, ECAT WOULD BE PREPARED TO SUPPORT TRADE LEGISLATION THAT WOULD PROVIDE:

... FOR COMPILATION OF AN INVENTORY OF FOREIGN BARRIERS TO U.S. TRADE, SERVICES, AND INVESTMENT, TOGETHER WITH A PROGRAM OF ACTION TO ALLEVIATE OR ELIMINATE SUCH BARRIERS. A LISTING OF SIMILAR U.S. BARRIERS SHOULD ALSO BE UNDERTAKEN;

... FOR AUTHORITY FOR THE PRESIDENT UNDER SECTION 301-304 OF THE TRADE ACT OF 1974 TO NEGOTIATE ON FOREIGN DIRECT INVESTMENT, SUBJECT TO APPROPRIATE SAFEGUARDS, AS WELL AS FOR A PRESIDENTIAL MANDATE TO NEGOTIATE BILATERAL AND MULTILATERAL INVESTMENT AGREEMENTS;

... FOR PRESIDENTIAL AUTHORITY TO NEGOTIATE FOR IMPROVED ACCESS FOR INTERNATIONAL TRADE IN SERVICES; AND

... FOR A LIMITED PRESIDENTIAL AUTHORITY TO NEGOTIATE TARIFF CHANGES, PRIMARILY IN ORDER TO ALLEVIATE TARIFF DISPARITIES BETWEEN THE UNITED STATES AND OTHER COUNTRIES IN THE HIGH TECHNOLOGY AND OTHER AREAS.

THANK YOU FOR GIVING US THE OPPORTUNITY TO PRESENT OUR VIEWS.

Emergency Committee for American Trade 1211 Connecticut Ave Washington DC 20036 (202) 659-5147

STATEMENT OF THE EMERGENCY COMMITTEE FOR AMERICAN TRADE ON RECIPROCITY

Not as academic theorists but rather as practical businessmen, the members of ECAT firmly believe in expanding international trade and investment because they see in such expansion benefits for the United States and the world economy as well as for their own firms. For this reason, ECAT has strongly supported efforts of our government seeking more open markets. ECAT also has encouraged businessmen overseas to support policies that ensure fair treatment of U.S. goods in foreign markets and to oppose restrictions on U.S. foreign direct investments. These have been the objectives of ECAT from the beginning and they remain ECAT's objectives today.

Increasingly, ECAT members see that the world trading system is not working satisfactorily. Despite the success of the Tokyo Round of multilateral trade negotiations, barriers to trade appear to be proliferating. Some of these barriers are clearly illegal under internationally agreed upon trading rules and can be dealt with under existing domestic law and rules of the world trading system. It is important that the Administration identify such illegal practices and vigorously seek their elimination through the processes of consultation, conciliation, and, where necessary, resort to the dispute settlement procedures of GATT. Nothing less will sustain confidence in this country that the existing system of reciprocal rights and obligations serves our interests.

Trade with Japan poses a number of vexing problems. While a seller par excellence in the world marketplace, Japan tends to exclude imported products that would in any serious way compete with its domestic industries and its farmers. This is particularly troubling to the members of ECAT who have supported the development of an open trading system. Indeed, such a system can only be maintained with the full cooperation of its major participants. The system was not intended to be a philanthropic one but rather one based on the reciprocal acceptance of obligations as well as rights.

ECAT members do not wish to see the trade pendulum swing toward bilateralism and protectionism. They do want to see increasing openness in foreign markets and increasing acceptance of the most-favored-nation principle. Among other things, ECAT members would like to see negotiations on the raft of nontariff trade barriers in the investment and services sectors; on the imbalance between the benefits received from and the support provided to the international trading system by Japan and by many of the newly industrializing countries; and on the growing reliance on subsidization of agricultural and other products by many of our trading partners. In dealing with these trade and investment problems we must take into account our overall national interests, ranging from national security to maintenance of the health of the international economic system.

ECAT recognizes that current rules and enforcement procedures are either inadequate or nonexistent for trade in agriculture, services, and foreign direct investment. In these areas, we must provide our government with appropriate bilateral and multilateral agreements.

The private sector and the government have available to them a wide range of international trade statutes designed to provide relief from both fair and unfair foreign trade practices. Many of these laws appear to be underutilized. The reasons are many and varied. Among them are the economic costs involved in processing trade complaints with the administering agencies; limited government resources; conflicts between domestic and foreign policy objectives; and the failure to anticipate problems in time for the ameliorating statutes to be of help.

Despite the wide range of trade laws, it is our view that the President may need additional statutory authorities to deal with foreign restrictions on direct investment by citizens of the United States. Clarification of current laws may also be necessary to enable the Executive to handle disputes in the services area.

A number of legislators have introduced trade bills in this session of the Congress. Several of them would grant the President negotiating authorities in the field of services. Others would grant the President negotiating authority in the field of international investment. A number of the bills would amend U.S. trade statutes to grant the President authorities to achieve "reciprocity" in our economic dealings with other countries.

A problem with most of the "reciprocity" bills is that they provide no clear definition of what the term is intended to mean. One thought, however, seems to be that the United States could restrict imports and investments from a country offering less favorable access to its markets than does the United States. A similar thought was expressed by Senator Robert Dole in a January 22, 1982, letter to The New York Times suggesting that "reciprocity should be assessed not by what agreements promise but by actual results -- by changes in the balance of trade and growth in investment between ourselves and our major economic partners."

Other proponents of "reciprocity" cite the U.S.-Japan trade imbalance in interpreting the concept to mean balancing trade flows country by country or even within narrow industrial or product sectors. While there are elements of seeming equity in this concept it is quite different from the traditional one whereby reciprocity expresses the principle that countries should have fair and nondiscriminatory access to each others' markets for products they produce competitively. In international trade negotiations based on this principle the United States has achieved reciprocity on the basis of negotiating a balanced package of concessions and benefits between itself and other nations. Under this multilateral concept of reciprocity, which ECAT supports, the United States achieves reciprocity when the aggregate benefits of concessions granted the United States by others are substantially equivalent to the concessions granted to them by the United States.

In the MTN negotiations that were concluded in 1979, nontariff barrier codes were negotiated on subsidies, procurement, standards and customs valuation. While the trade consequences that might follow from these codes were and are unknown, a measure of reciprocity was identified. It was the common undertaking of the code signatories to abide by the code rules. Under this concept, reciprocity means equivalent competitive opportunity in the case of government procurement covered by the procurement code and equal ground rules in the case of other codes.

While, as mentioned above, there are elements of apparent equity involved in the concept of reciprocity based on a measure of bilateral trade balancing, such a concept also poses a number of serious questions. Among them is the question of legality under our GATT and other contractual obligations, such as those in tax treaties and Treaties of Friendship, Commerce, and Navigation requiring that both most-favored-nation and national treatment be accorded to foreigners and their products in the United States. If the United States restricted imports in violation of international obligations in order to achieve a bilateral trade balance, existing international rules authorize the country whose trade was so restricted to retaliate against the United States.

Another major question would be the economic impact on U.S. exports and foreign investments if our trading partners should resort to similar reciprocity measures. While it is true that the United States has significant deficits in its trade with certain countries (for example, Japan) and in certain sectors (for example, automobiles), we enjoy significant surpluses with other countries (for example, Europe) and in important sectors (for example, agriculture). Just last year, the United States, for example, had a nearly $14 billion trade surplus with Europe which did not quite cover the nearly $16 billion trade deficit with Japan (based on F.A.S. statistics).

There is also the question whether broad acceptance of the principle of bilateral balancing would serve U.S. interests. The idea of forcing balance on a bilateral or narrow sectoral basis would significantly limit the benefits for all participants in a world trading system based on the principle of fair and nondiscriminatory access to global markets. Moreover, an attempt by the United States to impose a unilateral standard of fairness on its trading partners could begin a process leading ultimately to unraveling valuable trade commitments achieved in past negotiations that have encouraged a rapid and sustained growth in world trade for the benefit of all participants.

Fortunately, the Administration and members of Congress appear to be steering away from a concept of reciprocity based on narrow bilateral or sectoral balancing and are working collaboratively to develop legislation required to deal with problems that the world trade system does not address or addresses inadequately. ECAT is fully prepared to cooperate with this effort and has developed a set of guidelines that it would like to see incorporated in trade legislation that might be considered by the Congress.

****

In the remainder of this statement the Emergency Committee for American Trade suggests principles and guidelines that it would like to see incorporated in any international trade legislation that might be fashioned by the Administration and the Congress. We strongly believe that any legislation should be consistent with our international obligations in the GATT and elsewhere and that new legislation should not establish unilateral courses of action for the solution of foreign trade problems. We would rather see solutions to such problems worked out through existing international trading rules and domestic statutes in order to avoid international economic conflicts that would be harmful to all participants. Where the present structure is incapable of providing the mechanism for the solution of trade problems, we urge that common solutions be found through modification of the GATT itself and through conforming domestic legislation.

In carefully studying existing U.S. international trade statutes, we were impressed with their variety and scope. Nevertheless, we do believe that there are gaps in domestic law, particularly in the areas of foreign direct investment and international trade in services. Accordingly, we do believe that legislation providing the President with negotiating authorities in those areas would be a positive step that ECAT would want to support. Our comments on what such legislation might cover follows.

PURPOSES OF A TRADE BILL

ECAT members see five basic purposes that should be encompassed by any new trade bill.

First, it should provide that the United States maintain its leadership in working internationally for the removal of barriers to trade, services, and investment.

Second, it should require the identification and compilation of an inventory of the principal foreign barriers to United States goods, services, and investment.

Third, it should augment the ability of the President to enforce United States rights under multilateral trade agreements and to negotiate on a bilateral and multilateral basis for the elimination or reduction of foreign barriers to United States goods, services, and investment.

Fourth, it should include provisions designed to secure more open access to foreign markets for United States goods, services, and investment.

Fifth, it should be designed to foster the economic growth of the United States by providing for the expansion of United States commerce and investment.

BASIC PROVISIONS

An Inventory of Barriers to Trade

Available inventories of tariff and nontariff barriers to United States goods, investment, and services are inadequate. Any legislation should instruct and authorize the President to develop an inventory of major obstacles to expanding trade and investments arising out of policies of our trading partners, both in the advanced and developing worlds.

Specifically, the United States Trade Representative should analyze, with the assistance of other agencies, the acts, policies, and practices of our principal trading partners to determine whether they are (1) inconsistent with the provisions of, or otherwise deny benefits to the United States under any trade agreement or (2) are unjustifiable, unreasonable, or discriminatory and burden or otherwise significantly restrict United States commerce and investments.

The United States Trade Representative should then report his major findings to the President, together with (1) recommendations on ways to deal with specific problems which have been identified and which are not now adequately covered by multilateral or bilateral agreements and (2) an identification and evaluation of some major United States practices which our trading partners believe significantly restrict foreign commerce and investment. The report on findings should be kept current after its release.

Most importantly, an inventory of this sort would provide the basis for developing a broadly conceived strategy to reduce the sources of dissatisfaction with the current system and to lay the groundwork for expanding international trade and investment within the framework of rules that are widely perceived to be fair and constructive.

Authority for Negotiations on Direct Investment

The President has no basic statutory negotiating authority in the field of foreign direct investment. He is, therefore, relatively powerless to negotiate on such foreign barriers to U.S. direct investment as performance requirements or the denial of licenses for U.S. investments.

Investing abroad is of vital importance to the U.S. economy and to U.S. firms. The development of international rules on foreign direct investment, therefore, is of prime importance. Accordingly, ECAT recommends the amendment of Sections 301 through 304 of the Trade Act of 1974, as amended, to extend their authorities to cover foreign direct investment. This would arm the President with authority to retaliate against unjust foreign investment restrictions. The existence of this authority would grant the President a significant negotiating instrument that should help him in seeking international investment rules in the GATT and elsewhere, as well as in negotiating bilateral investment treaties with our trading partners.

The recommended grant of Section 301 investment authority to the President should include appropriate limitations to insure that adequate consideration is given to the potential cost to the United States of any action to limit foreign direct investment in the United States. We, therefore, suggest such limitations as:

> Requiring the President's investment-restricting actions to be taken within existing statutory authorities such as the Mineral Lands Leasing Act.
>
> Requiring the President to first make an explicit set of determinations of national interest, economic impact, and the likelihood of achieving success.

Most importantly, the President should be given the mandate to negotiate bilateral and multilateral agreements to eliminate or reduce barriers to direct investment.

Authority for Negotiating on International Trade in Services

As in the case of foreign direct investment, Section 301 also should be amended to make it clear that the burdens or restrictions on United States commerce covered by this section cover international trade in services. Foreign restrictions on the right of establishment in foreign markets and restrictions on the operation of enterprises in foreign markets should clearly be covered as should restrictions on the transfer of information in to, or out of, the country or instrumentality concerned.

In addition, the President must be provided clear authority to negotiate bilateral and multilateral agreements with other countries for the elimination or reduction of barriers to service industries.

OTHER PROVISIONS

Flexibility

To ensure the President maximum leverage, it should be specified that his action to enforce United States rights, or to obtain the elimination of an act, policy, or practice of a trading partner, need not be limited to the equivalent products, investment, or services affected by the offending act, policy, or practice.

To Ensure Adherence to Trade Obligations

In his determinations in the areas of goods, services, and investment, the President should be required to take into account U.S. obligations under applicable trade agreements and the potential impact on the economy.

Consultations

In those cases in which there is an affirmative determination by the United States Trade Representative to initiate an investigation with respect to a Section 301-304 petition, the requirement for consultations should be maintained.

To Require the Views of the International Trade Commission

The President should be required to request the views of the International Trade Commission regarding the impact on the United States economy of both an offending act, policy, or practice of one of our trading partners, or of any action contemplated by him as a response.

Other Negotiating Authority

A limited authority should be provided to the President, consistent with the five specific purposes noted earlier, to negotiate tariff changes, primarily in order to alleviate tariff disparities between the United States and other countries in the high technology and other areas. Provision should also be made for submission to the Congress of proposals to implement the results of such negotiations.

May, 1982

Senator **Danforth**. The next witness is Gen. Lawrence Snowden.

STATEMENT OF GEN. LAWRENCE F. SNOWDEN, PRESIDENT, AMERICAN CHAMBER OF COMMERCE IN JAPAN

General **Snowden**. Thank you, Mr. Chairman; members of the committee. On behalf of the business community in Tokyo I, one, bring you greetings, and second, bring you appreciation for your interest in this trade imbalance problem with Japan.

I am Lawrence F. Snowden, the 1982 president of the American Chamber of Commerce in Japan, an elected, nonsalaried position representing some 1,200 American businessmen in Japan, and some 500 American companies that do business in Japan every day.

I want to express my appreciation, Mr. Chairman, to you in particular for your last visit to Japan. Your forthright statements while you were there, the interest which you displayed and expressed to the Japanese were very well received, and got their attention.

Second, we are grateful for the hearings as you are conducting them with this subcommittee because it is focusing a lot of the Japanese attention on the subject. And that, again, is useful.

Now, Mr. Chairman, I have a rather lengthy statement that I had distributed in advance, including an attachment from the president of another chamber in Tokyo which I thought was most useful. I suppose I should be apologetic for the length of that statement, but I am not. It was just too complex for me to deal with in fewer words.

I might say, then, that I appreciate the fact that Senator Dole was good enough to refer to my statement, and quote some of my words. I'm appreciative, but the fact is that he has stolen my thunder. So perhaps I should simply jump to the bottom line and explain why we reached our particular conclusion.

Our position ultimately in that long statement is that the ACCJ does not believe that additional legislative authority is either necessary or desirable at this time. Instead of additional legislative action, we think the Congress perhaps should charge the President and the executive branch to use the ample powers which are available in various trade laws in existing international organizations to persuade the Japanese that their own best national interests will be served by truly opening their market place.

The legislative record should reflect congressional intent that section 301 apply equally to services and investment as to merchandise trade. On longer term solutions, we must take action on the American side to improve U.S. competitiveness in manufactured goods and to expand the U.S. presence in Japan in the trade, investment and services sectors.

We believe that the current positive attitude of Japan's political leadership offers the best environment in a long time for our U.S. negotiators to resolve many of the regulatory and market access problems which have plagued us for so long in Japan. And we believe major achievements are quite possible and very probable. And additional legislation will not be required to obtain these improvements.

Now as to the rationale for that position. I simply want to emphasize some of the positive things that we have seen take place in Japan in the last several months. And some of them go back a little bit longer. We believe honestly, as Senator Dole referred, that the political leadership has the message very strongly now from our own political leadership and from visits like yours to Japan. A number of steps have been taken that are very positive within the Japanese Government at this time. We believe that they tried to respond to earlier pressures from the United States by the creation of the Office of the Trade Ombudsman. And that system is at work and is working pretty well. It is not going to handle some of the major items which still require negotiations at the government-to-government level. But it's a positive step that is working.

Now among other things, we regret to say that if all the barriers come down all at once, we are still going to have the problem of getting through some of the complex market procedures that characterize Japan. We must work at those deliberately with great effort. And we intend to. I can assure you that the ACCJ wants very much to solve this problem. We are very much in support of what you are doing here and we appreciate the opportunity to submit the statement for the record and to appear today.

Senator **Danforth**. General, thank you very much.

[The prepared statement follows:]

TESTIMONY BY

LAWRENCE F. SNOWDEN

PRESIDENT

AMERICAN CHAMBER OF COMMERCE IN JAPAN

(ACCJ)

BEFORE THE

DANFORTH SUBCOMMITTEE

OF THE

SENATE FINANCE COMMITTEE

WASHINGTON D.C.

6 MAY, 1982

I AM LAWRENCE F. SNOWDEN, THE 1982 PRESIDENT OF THE AMERICAN CHAMBER OF COMMERCE IN JAPAN, AN ELECTED, NON-SALARIED POSITION REPRESENTING SOME 1,200 AMERICAN BUSINESSMEN AND 500 AMERICAN COMPANIES DOING BUSINESS EVERY DAY IN JAPAN. IN ADDITION TO MY ACCJ RESPONSIBILITIES, I SERVE AS A SPECIAL ADVISOR TO THE ADVISORY COUNCIL ON U.S.-JAPAN RELATIONS, ALONG WITH U.S. SPECIAL TRADE REPRESENTATIVE WILLIAM BROCK, FORMER U.S. AMBASSADOR TO JAPAN ROBERT INGERSOLL, AND UNITED AUTO WORKERS PRESIDENT DOUGLAS FRASER.

IN MY BUSINESS RESPONSIBILITIES IN JAPAN I AM THE VICE PRESIDENT, FAR EAST AREA, FOR HUGHES AIRCRAFT INTERNATIONAL SERVICE COMPANY, A SUBSIDIARY OF HUGHES AIRCRAFT COMPANY PROVIDING REPRESENTATION AND MARKETING SUPPORT FOR ALL OF HUGHES AIRCRAFT COMPANY BUSINESS AROUND THE WORLD. MY RESPONSIBILITIES IN THE FAR EAST INCLUDE KOREA AND TAIWAN IN ADDITION TO JAPAN.

MY PERSONAL CLOSE INVOLVEMENT IN JAPANESE MATTERS EXTENDS BACK TO 1972 WHEN, IN MY MILITARY CAPACITY, I WAS ASSIGNED AS CHIEF OF STAFF, U.S. FORCES, JAPAN, AND SERVED IN THAT CAPACITY FOR THREE YEARS. IN THAT POSITION I WAS THE U.S. CHAIRMAN OF THE U.S.-JAPAN JOINT COMMITTEE AND ALSO SERVED AS CHAIRMAN OF THE UNITED NATIONS BOARD IN JAPAN.

MY CIVILIAN BUSINESS EXPERIENCE COVERS ONLY THE LAST TWO AND HALF YEARS BUT THROUGH MY DEEP INVOLVEMENT WITH THE AMERICAN CHAMBER FUNCTIONS I HAVE BEEN ABLE TO GAIN VERY VALUABLE INSIGHTS INTO THE JAPANESE-U.S. TRADE RELATIONSHIPS AS WELL AS WORKING CLOSELY IN MATTERS RELATED TO JAPANESE NATIONAL SECURITY.

MY INVOLVEMENT WITH JAPAN OVER THE PAST TEN YEARS HAS CONVINCED ME OF THE GREAT IMPORTANCE OF THE U.S.-JAPAN RELATIONSHIP AND I WAS SO PERSONALLY PERSUADED ABOUT THAT IMPORTANCE THAT I ELECTED TO RETURN TO JAPAN TO TRY TO FOSTER THAT RELATIONSHIP AFTER I DEPARTED MILITARY SERVICE.

THE ACCJ WAS FOUNDED IN 1948 AND ITS PURPOSE IS "TO PROMOTE THE DEVELOPMENT OF COMMERCE BETWEEN THE UNITED STATES AND JAPAN." TO ACCOMPLISH THIS PURPOSE, ACCJ MAINTAINS CLOSE RELATIONS WITH JAPANESE GOVERNMENT AND BUSINESS CIRCLES, ENJOYS EXTREMELY CLOSE TIES WITH THE AMERICAN EMBASSY IN TOKYO, AND KEEPS IN TOUCH WITH BUSINESS AND GOVERNMENT ORGANIZATIONS IN THE UNITED STATES FOR THE EXCHANGE OF IDEAS AND OPINIONS OF THE BILATERAL U.S.-JAPAN ECONOMIC RELATIONSHIP.

ADDITIONALLY, ACCJ ENJOYS A CLOSE RELATIONSHIP WITH THE AMERICAN CHAMBER OF COMMERCE IN OKINAWA (ACCO), IS AN ACTIVE MEMBER OF THE ASIA-PACIFIC COUNCIL OF AMERICAN CHAMBERS OF COMMERCE (APCAC) AND THE CHAMBER OF COMMERCE OF THE UNITED STATES (COCUSA) IN ORDER TO MONITOR ISSUES AND EXPRESS OUR OPINIONS ON ISSUES WHICH AFFECT OUR INTERESTS. LET ME STRESS HOWEVER, THAT TODAY I REPRESENT ONLY THE ACCJ AND I DO NOT SPEAK FOR THE U.S. CHAMBER OR OTHERS WITH WHOM WE ARE ASSOCIATED.

THE ACCJ OPERATES THROUGH A COMMITTEE STRUCTURE, WITH SOME TWO DOZEN DIFFERENT COMMITTEES MEETING REGULARLY, COVERING TOPICS THAT RANGE FROM EMPLOYMENT PRACTICES TO PATENTS AND TRADEMARKS; TO SEMINARS COVERING INVESTMENT BOTH IN JAPAN AND THE UNITED STATES; TAXATION, MARKETING PRACTICES AND BARRIERS TO TRADE. THE ACCJ IS A

POPULAR FORUM FOR VISITING HEADS OF MAJOR CORPORATIONS AND OUR ACCJ BRIEFING BREAKFAST PROGRAM HAS FOR MANY YEARS BEEN AN OBLIGATORY STOP FOR MANY VISITORS TO JAPAN WHO WISH TO LEARN FIRST HAND FROM PRACTITIONERS IN THE FIELD ABOUT WHAT IS REALLY GOING ON IN THE JAPANESE MARKET PLACE.

BEFORE TURNING TO THE SPECIFICS OF U.S.-JAPANESE TRADE RELATIONS AND THE SEVERAL PROPOSALS FOR LEGISLATION, I WOULD LIKE TO OUTLINE BRIEFLY THE OVERALL CONTEXT WITHIN WHICH THE ACCJ APPROACHES THE CURRENT TRADE ISSUES.

FIRST, WE BELIEVE THE UNITED STATES HAS AN IMPORTANT STAKE IN THE MAINTENANCE OF THE OPEN ECONOMIC SYSTEM ESTABLISHED AFTER WORLD WAR II, UNDER AMERICAN LEADERSHIP AND WITH EUROPEAN SUPPORT. IT REPRESENTS ONE OF OUR MAJOR POST-WAR ACHIEVEMENTS AND LED TO THE GREATEST ERA OF ECONOMIC GROWTH AND WELL-BEING THE INDUSTRIAL DEMOCRACIES HAVE SEEN IN THE LAST CENTURY. IT STILL SERVES THE U.S. NATIONAL INTEREST BUT AS OUR STAKE IN THE INTERNATIONAL ECONOMY INCREASES, THE SCOPE OF THE SYSTEM MUST BE EXPANDED. UP TO NOW WE HAVE BEEN CONCERNED MAINLY WITH PRODUCTS AND COMMODITIES BUT WE NOW NEED TO RECOGNIZE THE GROWING IMPORTANCE OF SERVICES AND INVESTMENT.

IN RECENT YEARS WE HAVE SEEN A STRONG TREND IN THE FREE WORLD TOWARD GLOBALIZATION OF INDUSTRIES AND MARKETS. EXCEPT FOR THE DEVELOPING COUNTRIES WHERE A GENUINE CASE CAN BE MADE FOR TEMPORARY PROTECTIONIST MEASURES, TRADE, SERVICES AND INVESTMENT PRACTICES SHOULD BE DICTATED BY THE GENERAL PRINCIPLES OF COMPETITION AND OPEN MARKETS. PURSUIT OF THESE OBJECTIVES REPRESENTS

THE BEST HOPE FOR THE MOST EFFICIENT ALLOCATION OF RESOURCES AND RISING STANDARDS OF LIVING WITH POLITICAL AND ECONOMIC DEMOCRACY.

ON THE ECONOMIC FRONT, A THREAT TO THIS OPEN AND DEMOCRATIC STRUCTURE COMES FROM POTENTIAL RESURGENCE OF NATIONALISTIC PROTECTIONISM ATTITUDES WHICH CHARACTERIZED THE 1930's. THERE IS A THREAT ALSO BY THE FAILURE OF SOME COUNTRIES WHICH HAVE ACHIEVED FULL INDUSTRIALIZATION TO FOLLOW THE LETTER AND SPIRIT OF THE INTERNATIONAL AGREEMENTS IN THE TRADE AND ECONOMIC FIELD. THE OPEN MARKET SYSTEM IS THREATENED POLITICALLY BY AGGRESSIVE ACTIONS OF THE CENTRALLY-PLANNED, STATE-TRADING COUNTRIES. ALTHOUGH THE SO-CALLED SOCIALIST SYSTEM HAS EVERYWHERE PROVED TO BE INEFFECTIVE IN PROVIDING ADEQUATE STANDARDS OF LIVING, IT IS KEPT IN FORCE OR EXPANDED BY POLITICAL SUBVERSION AND REPRESSION AND, SOMETIMES, BY MILITARY INVASION.

IN THE WORLD-WIDE STRUGGLE AGAINST THESE ANTI-DEMOCRATIC, CLOSED MARKET FORCES, THE U.S. HAS A MAJOR STAKE IN THE ASIA/PACIFIC AREA WHICH HAS SOME OF THE FASTEST GROWING ECONOMIES IN THE WORLD. MOST GOVERNMENTS IN THE AREA ARE COMMITTED TO THE FREE-WORLD, OPEN TRADING SYSTEM AND EVEN CHINA, THE LARGEST COUNTRY IN THE AREA, IS TRYING TO MOVE AWAY FROM RIGID IDEOLOGY TO PRAGMATIC ECONOMIC POLICIES.

JAPAN IS BY FAR THE MOST IMPORTANT COUNTRY IN THE AREA, POLITICALLY AND ECONOMICALLY, AND THE U.S.-JAPAN RELATIONSHIP IS CRUCIAL TO OUR EFFORTS TO EXTEND AND BROADEN THIS ERA OF PEACE AND PROSPERITY.

WHILE I BELIEVE IT IMPORTANT TO UNDERSTAND THE UNDERLYING

REALITIES OF JAPAN'S ECONOMIC POSITION, I DON'T WANT TO GIVE THE IMPRESSION THAT THE ACCJ IS AN APOLOGIST FOR JAPAN. WE BELIEVE HOWEVER, THAT BY THE INSIGHT WE GAIN FROM BEING ON THE SCENE EVERY DAY WE GAIN A DEEPER UNDERSTANDING OF THE BACKGROUND AND EVOLUTION OF JAPAN'S PRESENT ECONOMIC SUCCESS WHICH NOW CAUSES SO MUCH CRITICISM FROM HER TRADING PARTNERS AROUND THE WORLD.

THE ECONOMIC MIRACLE IN JAPAN SINCE WORLD WAR II HAS NOT COME ABOUT JUST BECAUSE JAPAN HAS A HOMOGENEOUS WORK FORCE AND A CLOSE LABOR/MANAGEMENT AND BUSINESS/GOVERNMENT RELATIONSHIP. ALONG THE WAY IN THAT ECONOMIC GROWTH THERE HAS BEEN DENIAL OF CONSUMERISM IN FAVOR OF INDUSTRIAL DEVELOPMENT, CONSIDERABLE RELIEF FROM THE EXPENSE OF A MAJOR MILITARY ESTABLISHMENT, AND MOST IMPORTANTLY IN THE CONTEXT OF TODAY'S DISCUSSIONS, THE OPPORTUNITY TO SELL IN OPEN MARKETS ABROAD WHILE PROTECTING ITS OWN INDUSTRIES FROM OUTSIDE COMPETITION AND KEEPING THE MARKET PLACE RELATIVELY CLOSED BY A WEB OF OFFICIAL AND UN-OFFICIAL LAWS, ADMINISTRATIVE REGULATIONS AND PRACTICES.

I BELIEVE THE POINT THAT MUST BE MADE TO JAPAN TODAY IS THAT OF THE WISDOM OF ENLIGHTENED SELF-INTEREST. WHILE RECOGNIZING JAPAN'S HISTORICAL SENSE OF VULNERABILITY, THE FACT IS THAT TODAY JAPAN IS A STRONG, MATURE ECONOMY, OPERATING WITH MORE FAVORABLE RESULTS THAN MOST OTHER DEVELOPED ECONOMIES AND CAN NO LONGER EXPECT TO ENJOY ONE-SIDED TRADING CONDITIONS WITHOUT FEAR OF RETALIATION.

IT IS IN THE CONTEXT OF THESE BROADER CONSIDERATIONS THAT I WOULD LIKE TO PLACE MY MORE SPECIFIC REMARKS.

TRADE FLOWS AND FRICTIONS HAVE BEEN THE FOCUS OF INCREASING

ATTENTION OVER THE LAST SEVERAL YEARS AND IT IS INCREASINGLY CLEAR THAT BOTH THE U.S. AND JAPAN HAVE A GROWING STAKE IN THE MOVEMENT OF INVESTMENT AND SERVICES BOTH WAYS. WHILE OUR TRADE BALANCE WITH JAPAN IS OVERWHELMINGLY NEGATIVE, OUR ACCOUNT IN INVISIBLES GOES THE OTHER WAY. AS YOU ZERO IN ON THE VISIBLE TRADE ISSUE, THE IMPORTANCE OF SERVICES AND INVESTMENT SHOULD NOT BE OVERLOOKED.

I REALIZE THAT LEGISLATIVE PROPOSALS BEFORE THE COMMITTEE GENERALLY UNDERLINE THE NEED FOR INCLUDING INVESTMENT AND SERVICES IN INTERNATIONAL NEGOTIATIONS. WE IN THE ACCJ SUPPORT AND APPLAUD THIS EMPHASIS BUT WE BELIEVE THAT THE ROLE OF NON-TRADE ELEMENTS IN OUR OVER-ALL BALANCE WITH JAPAN DESERVES GREATER ATTENTION.

OTHER FACTORS AFFECTING OUR ECONOMIC RELATIONSHIP WITH JAPAN ARE MACRO-ECONOMIC GOVERNMENT POLICIES AND MICRO-ECONOMIC BUSINESS PRACTICES. I DO NOT INTEND TO GO INTO THE LATTER POINT. EVERYONE IS, I BELIEVE, WELL AWARE OF THE NEED FOR AMERICAN INDUSTRY TO IMPROVE ITS GLOBAL COMPETITIVENESS. TO SOME EXTENT THIS IS A FUNCTION OF GOVERNMENT ECONOMIC AND TAX POLICIES. IT IS ALSO OBVIOUSLY A FUNCTION OF MANAGEMENT AND LABOR GETTING BACK TO THE FUNDAMENTALS WHICH HAVE SERVED SO WELL AS THE FOUNDATION OF U.S. ECONOMIC STRENGTH IN THE PAST.

ON THE MACRO-ECONOMIC SIDE, A PRIMARY MATTER IS THE CRITICAL ROLE OF EXCHANGE RATE RELATIONSHIPS. LARGELY BECAUSE OF THE CURRENT DISPARITY BETWEEN U.S. AND JAPANESE INTEREST RATES, THE YEN IS UNDERVALUED, PROBABLY BY AT LEAST 20%. ALL MY COLLEAGUES IN THE ACCJ CAN TELL YOU WHAT A HANDICAP THIS IS TO OVERCOME IN TRADING WITH JAPAN AND, OF COURSE, IT MAKES JAPANESE EXPORTS EXTRAORDINARILY COMPETITIVE IN THE U.S. THIS IS A FACT OF ECONOMIC LIFE AT THE MOMENT, BUT WE HOPE THE PRESIDENT'S PROGRAM WILL SOON LEAD TO LOWER INTEREST RATES WHICH SHOULD IN TURN REDUCE THE DEVIATION FROM THE TRUE PURCHASING POWER PARITY OF THE YEN AND THUS HELP REDUCE THE CURRENT JAPANESE TRADE SURPLUS.

MUCH OF THE CURRENT DEBATE CENTERS AROUND WHETHER JAPAN IS A "CLOSED" MARKET OR NOT. THE JAPANESE ARGUE THAT THEIR MARKET IS AS OPEN AS OTHER INDUSTRIALIZED COUNTRIES. THEY CITE LOW AVERAGE TARIFF RATES AND THE SMALL NUMBER OF RESIDUAL QUANTITIVE IMPORT RESTRICTIONS, MAINLY ON AGRICULTURAL PRODUCTS. CUSTOMS DUTY AVERAGES CAN HIDE VERY HIGH RATES ON CERTAIN SENSITIVE ITEMS AND EVEN A LOW DUTY CAN, IN SOME CASES, PROVIDE SUBSTANTIAL EFFECTIVE PROTECTION.

WE DO NOT BELIEVE IT IS WORTHWHILE AT THIS STAGE TO CONCENTRATE ON TARIFFS. JAPAN HAS ALREADY ACTED ON SOME TARIFF REDUCTIONS TWO YEARS AHEAD OF THE AGREED SCHEDULE. ALTHOUGH TARIFFS AND QUOTAS ARE MORE EASILY MEASURED, INTERNATIONAL COMPARISONS ARE STILL DIFFICULT AND IMPRECISE. WHILE THE JAPANESE ACTION ON TARIFF CUTS IS WELCOME, IT CANNOT BE LOOKED UPON AS A MAJOR STEP TOWARD CONVINCING THE WORLD THAT THE JAPANESE MARKET IS OPEN.

MUCH MORE IMPORTANT AT THIS STAGE, AND CORRESPONDINGLY MORE DIFFICULT TO DEAL WITH, ARE NON-TARIFF IMPEDIMENTS TO TRADE AND ATTITUDES, - OF THE GENERAL PUBLIC, GOVERNMENT BUREAUCRATS, AND COMPANY PURCHASING EXECUTIVES.

TO UNDERSTAND THE SITUATION IN JAPAN REGARDING THESE COMPLEX FACTORS, IT IS NECESSARY TO REFER AGAIN TO THE HISTORICAL EVOLUTION

OF JAPAN'S ECONOMY. JAPAN WAS CLOSED TO THE OUTSIDE WORLD FOR NEARLY 300 YEARS, MUCH LONGER THAN OTHER INDUSTRIALIZED COUNTRIES, AND THIS CREATED A TRADITION OF DELIBERATELY FOSTERING A CLOSED, HOMOGENEOUS SOCIETY. EVEN TODAY, IT IS ALMOST IMPOSSIBLE FOR A FOREIGNER TO BECOME A JAPANESE CITIZEN. IN PART THIS POLICY IS DICTATED BY JAPAN'S LIMITED LAND AREA. BUT THE POLICY IS ALSO BELIEVED BY THE JAPANESE TO BE RESPONSIBLE FOR MANY OF THE FEATURES FOR WHICH JAPAN IS ENVIED BY OTHER PEOPLE: LOW STREET CRIME RATE, A DISCIPLINED AND LOYAL LABOR FORCE, CLOSE RELATIONS BETWEEN BUSINESS AND GOVERNMENT AND BETWEEN LABOR AND MANAGEMENT. THE JAPANESE FEEL THEY HAVE A NEAT, TIGHT SYSTEM AND THEY WANT TO KEEP IT THAT WAY. THIS ATTITUDE MAY SUIT THE JAPANESE VERY WELL, BUT IT HAS OBVIOUS ADVERSE CONSEQUENCES FOR PEOPLE TRYING TO TRADE WITH OR INVEST IN JAPAN. IT ALSO HAS AN IMPORTANT IMPACT ON EFFORTS TO MAINTAIN AN OPEN INTERNATIONAL SYSTEM SINCE JAPAN HAS BECOME SUCH A SIGNIFICANT PLAYER ON THE WORLD ECONOMIC SCENE.

IN THE POST WORLD WAR II PERIOD, JAPAN EVOLVED A NATIONAL INDUSTRIAL POLICY DESIGNED TO RESTORE ITS COMPLETELY DEVASTATED ECONOMY. WITH UNITED STATES ASSISTANCE AND FORBEARANCE, JAPANESE GOVERNMENT AND INDUSTRY FOLLOWED A POLICY AKIN TO THE "INFANT INDUSTRY" APPROACH OF LESS-DEVELOPED COUNTRIES. THROUGH A SYSTEM OF EXTENSIVE IMPORT RESTRICTION, ADMINISTRATIVE GUIDANCE AND GOVERNMENT SUPPORT, JAPANESE INDUSTRY WAS HEAVILY PROTECTED FROM OUTSIDE COMPETITION. IMPORT RESTRICTIONS WERE NOT MODERATED UNTIL JAPANESE INDUSTRY WAS FULLY ABLE TO FACE INTERNATIONAL COMPETITION. SIMILAR "BALANCE-OF-PAYMENTS" RESTRICTIONS WERE APPLIED IN EUROPE AFTER WORLD WAR II, BUT THEY WERE LARGELY REMOVED IN THE EARLY 1960's WHEN EUROPEAN CURRENCIES BECAME CONVERTIBLE. RELAXATION OF

FINANCIAL CONTROLS IN JAPAN AND INTERNATIONAL USE OF THE YEN BEGAN SERIOUSLY ONLY IN THE 1980's.

WITH THIS KIND OF HISTORY AND JAPAN'S TRACK RECORD, IT IS EASY TO UNDERSTAND WHY NORTH AMERICANS AND EUROPEANS ARE SUSPICIOUS AND CRITICAL OF JAPANESE "LIBERALIZATION" CLAIMS. FURTHERMORE, THE HISTORICAL PATTERN HAS BEEN THAT RELAXATION OF RESTRICTIONS BY JAPAN HAS BEEN ACHIEVED ONLY UNDER HEAVY OUTSIDE PRESSURE. UNTIL RECENTLY, IT HAS NOT BEEN CLEAR THAT JAPANESE LEADERSHIP ACCEPTED THE BASIC NOTION THAT JAPAN'S STAKE IN AN OPEN WORLD ECONOMY CALLS FOR JAPAN TO MOVE ON ITS OWN INITIATIVE.

AT THIS POINT, I WOULD LIKE TO CITE SOME EXAMPLES OF NON-TARIFF IMPEDIMENTS TO TRADE. THE MOST DIFFICULT TO HANDLE ARE REGULATIONS AND STANDARDS OSTENSIBLY IMPOSED FOR HEALTH, SAFETY OR ENVIRONMENTAL REASONS. THE TASK OF SEPARATING LEGITIMATE RULES, REGULATIONS AND ADMINISTRATIVE PRACTICES FROM TRADE PROTECTIVE ELEMENTS IS ALMOST IMPOSSIBLE. THE BEST GUIDELINE WE HAVE FOUND IS THE PRACTICE FOLLOWED BY OTHER COUNTRIES SIMILARLY SITUATED.

LET ME GIVE YOU A COUPLE OF EXAMPLES. JAPANESE AUTOMOBILE MANUFACTURERS NEED ONLY ATTACH A LABEL TO THE VEHICLES THEY EXPORT CERTIFYING THAT THEY MEET U.S. SAFETY STANDARDS ALTHOUGH THEY MUST PASS THE EPA TEST REQUIREMENTS ON EMISSIONS AS DO ALL U.S. MANUFACTURED VEHICLES. NO FURTHER DOCUMENTATION IS REQUIRED, ALTHOUGH THERE MAY BE SPOT CHECKS OF COMPLIANCE BY THE NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION (NHTSA). IN JAPAN, U.S. MANUFACTURERS FACE EXTREMELY COSTLY AND TIME-CONSUMING PROCESSES FOR THEIR VEHICLES, INVOLVING ELABORATE DOCUMENTATION AND DUPLICATE TESTING FOR SAFETY, EMISSIONS CONTROL MEASURES AND NOISE STANDARDS.

IN A DIFFERENCT FIELD - WHERE U.S. MANUFACTURERS ARE DOING WELL DESPITE ONEROUS RULES AND REGULATIONS - JAPN INSISTS ON APPLYING A POSITIVE LIST OF INGREDIENTS WHICH MAY BE USED IN COSMETICS. ONLY THESE INGREDIENTS MAY BE USED IN IMPORTED AND DOMESTIC COSMETICS. A LENGTHY AND EXPENSIVE PROCESS IS REQUIRED TO GET A NEW INGREDIENT ON THIS LIST. THE U.S., ON THE OTHER HAND, APPLIES A NEGATIVE LIST OF INGREDIENTS WHICH LISTS ONLY THE INGREDIENTS WHICH ARE RESTRICTED. UNLESS THE INGREDIENT IS ON THIS NEGATIVE LIST, IT MAY BE USED IN IMPORTED COSMETICS. FROM A FOREIGN MANUFACTURERS STAND POINT THE PRACTICAL DIFFERENCES OF THESE DIFFERING APPROACHES IS A FRUSTRATING AND BUREAUCRATIC BARRIER.

GIVEN THE DIFFICULTY IN DEALING WITH SUCH PROBLEMS, A SYSTEM OF PUBLICATION, HEARING, AND APPEALS REGARDING BUREAUCRATIC DECISIONS IS ESPECIALLY IMPORTANT. IN THE U.S. WE HAVE SUCH A TRADITION. JAPAN DOES NOT. DECISIONS ARE USUALLY MADE BY OFFICIALS IN THE MINISTRY CONCERNED IN CONSULTATION WITH JAPANESE INDUSTRY. THERE IS NO OPPORTUNITY FOR OUTSIDERS TO MAKE REPRESENTATIONS BEFORE THE DECISION AND NO ESTABLISHED RIGHT OF APPEAL AFTERWARDS. JAPAN IS NOT A LEGALISTIC SOCIETY SO THE JAPANESE HAVE MANY FEWER LAWYERS PER CAPITA THAN WE DO AND THEY SEEM TO WANT TO KEEP IT THAT WAY.

WE CANNOT AND SHOULD NOT EXPECT TO IMPOSE OUR INTERNAL LEGAL PROCEDURES ON OTHER COUNTRIES, BUT THE REDUCTION OF SUCH ADMINISTRATIVE IMPEDIMENTS TO TRADE WILL BE REALIZED ONLY IF SOME KIND OF COMPLAINT PROCEDURE IS INTRODUCED. THE JAPANESE HAVE TAKEN A MODEST FIRST STEP IN THIS DIRECTION BY ESTABLISHING THE OFFICE OF THE TRADE OMBUDSMAN (THE OTO) AS RECOMMENDED BY THE WISEMEN'S REPORT LAST YEAR. THE ESTABLISHMENT OF THE OTO UNDER THE CHIEF

CABINET SECRETARY WAS A REAL BREAKTHROUGH IN THE JAPANESE SYSTEM AND I BELIEVE THE JAPANESE GOVERNMENT HAS NOT BEEN GIVEN ADEQUATE RECOGNITION FOR THAT AND ITS OTHER EFFORTS. THE ONE NOTABLE EXCEPTION WAS THAT DURING THE MOST RECENT ROUND OF TRADE DISCUSSIONS IN TOKYO THE U.S. SIDE TONED DOWN THE RHETORIC AND EXPRESSED SOME APPRECIATION FOR STEPS WHICH HAD BEEN TAKEN, BUT AT THE SAME TIME PRESSED FOR ADDITIONAL ACTIONS TO OPEN THE MARKET. THIS WAS A WELCOME CHANGE FROM THE HEAVY CRITICISM FROM WASHINGTON WHICH DID LITTLE TO PROVIDE A USEFUL ENVIRONMENT FOR NEGOTIATIONS ON TRADE ISSUES. IT IS TOO EARLY YET TO JUDGE HOW WELL THE OTO WILL WORK, BUT THE CONCEPT REPRESENTS A STEP FORWARD AND IT SHOULD BE WELCOMED.

AS REGARDS THE OTO, IT WAS INTERESTING TO NOTE THAT OF THE FIRST EIGHT CASES SUBMITTED TO THE OTO, SIX WERE FROM JAPANESE IMPORTERS WHO WERE COMPLAINING ABOUT DISCRIMINATORY REGULATIONS AGAINST IMPORTED GOODS. AS OF MID-MARCH THE OTO HAD RECEIVED 24 GRIEVANCES FROM FOREIGN AND JAPANESE IMPORTERS. IT IS MY UNDERSTANDING THAT 10 CASES HAVE BEEN RESOLVED. UNDER THE TRADE STUDY GROUP ARRANGEMENT WE ARE ASKING THE OTO TO GIVE US COMPLETE INFORMATION ON THE CASES IT HANDLES, TO INCLUDE SPECIFICS ON HOW THE CASES WERE SETTLED.

THE OTO IS VIEWED AS A POSITIVE STEP IN DEALING WITH ROUTINE CUSTOMS AND REGULATORY INCONSISTENCIES BUT I DO NOT EXPECT THAT THE OTO WILL BE THE MOVING FORCE IN RESOLVING ANY OF THE SO-CALLED "BIG TICKET ITEMS" WHICH MUST CONTINUE TO BE ADDRESSED AT THE GOVERNMENT-TO-GOVERNMENT LEVEL.

THE SECOND MOST IMPORTANT ACTION WAS THE ACCELERATED EFFECTIVE DATE OF TARIFF REDUCTIONS AGREED TO BY JAPAN IN THE GATT NEGOTIATIONS.

THERE ARE NOT MANY CUTS WHICH WILL HAVE A MAJOR IMPACT ON OUR TRADE BALANCE BUT IT IS A BONUS IN TRADE LIBERALIZATION WHICH MOVES IN THE RIGHT DIRECTION.

THE SO-CALLED "IMPROVEMENTS" IN NON-TARIFF BARRIERS WHICH THE ESAKI MISSION EXPLAINED HERE IN WASHINGTON EARLIER THIS YEAR WERE A DISAPPOINTMENT TO THE U.S. TRADE NEGOTIATORS. SOME OF THE IMPROVEMENTS REPRESENTED ACTIONS ALREADY TAKEN AND MOST OF THEM WERE DESCRIBED IN SUCH GENERAL TERMS THAT WE WILL HAVE TO WAIT FOR MEETINGS BETWEEN OUR INDUSTRY GROUP REPRESENTATIVES AND THE RESPONSIBLE MINISTRIES BEFORE WE CAN JUDGE THE VALUE OF THE "IMPROVEMENTS". ONCE AGAIN, A MODEST STEP BUT A POSITIVE ONE.

LATER THIS MONTH THE JAPANESE GOVERNMENT IS EXPECTED TO ANNOUNCE ANOTHER PACKAGE OF TRADE LIBERALIZATION MEASURES IN AN EFFORT TO SATISFY FOREIGN PRESSURES EXPECTED AT THE ECONOMIC SUMMIT MEETING SCHEDULED FOR JUNE. EVERY LITTLE BIT HELPS OF COURSE, BUT THE BASIC ISSUE WHICH ALWAYS SEEMS TO REMAIN IS THE OVER-ALL JAPANESE ATTITUDE TOWARD IMPORTED GOODS. AS MY COUNTERPART AT THE CANADIAN CHAMBER OF COMMERCE IN JAPAN RECENTLY POINTED OUT:

> "......THOSE TRADING COMPANY REPRESENTATIVES WHO SECURE THE SUPPLY OF RAW MATERIALS ARE 'HEROES'. THOSE PEOPLE WHO IMPORT FINISHED PRODUCTS IN COMPETITION WITH JAPANESE INDUSTRY ARE PRACTICALLY TRAITORS."

INCIDENTALLY, THE PRESIDENT OF THE CANADIAN CHAMBER OF COMMERCE, MR. S.J. KAUFMANN WROTE A FINE ARTICLE FOR THE JAPAN TIMES NEWSPAPER AND WITH HIS PERMISSION I HAVE APPENDED A COPY OF IT TO MY STATEMENT. I COMMEND IT TO YOU AS A WELL-WRITTEN STATEMENT OF

ATTITUDINAL PROBLEMS WHICH ARE SO TROUBLESOME TO THE FOREIGN BUSINESSMAN IN JAPAN.

THE U.S. GOVERNMENT HAS BEEN PUTTING ITS PRIMARY EMPHASIS ON DEMANDING THE FURTHER OPENING OF THE JAPANESE MARKET. WAGING A STEADY, RHETORICAL AND ALMOST EMOTIONAL CAMPAIGN AGAINST NON-TARIFF BARRIERS, AND EVEN STRUCTURAL OR CULTURAL BARRIERS. THE INSISTENT TONE HAS REFLECTED DEEP FRUSTRATION WITH SLOW PROGRESS IN THE PAST, AND A FEELING OF HAVING BEEN OUT-MANEUVERED.

THOSE OF US IN THE ACCJ CAN WELL UNDERSTAND THAT FRUSTRATION. MANY IN THE ACCJ HAVE BEEN INVOLVED FOR FIVE YEARS IN TRYING TO REDUCE NTBs THROUGH BOTH THE AMERICAN CHAMBER AND THE BI-NATIONAL TRADE STUDY GROUP. THE SLOW PACE, HOWEVER, IS NOT WHOLLY THE FAULT OF THE JAPANESE. TO IDENTIFY SPECIFIC BARRIERS ACCURATELY GENERALLY REQUIRES BOTH TIME-CONSUMING FACTUAL RESEARCH, AND THE FULL COOPERATION OF THE COMPANIES AFFECTED. RELATIVELY FEW COMPANIES, JAPANESE OR FOREIGN, ARE WILLING TO UNDERTAKE THE WORK INVOLVED, AND AT THE SAME TIME EXPOSE THEMSELVES TO THE REAL OR IMAGINED POSSIBILITY OF RETALIATION. THE JAPANESE AGENTS OR ADVISORS OF FOREIGN COMPANIES WILL INVARIABLY ADVISE THEM NOT TO ROCK THE BOAT.

EVEN WHEN CLEARLY IDENTIFIED, THE NEGOTIATIONS INVOLVED IN REMOVING NON-TARIFF BARRIERS TEND TO BE LONG AND DIFFICULT. THE LOWER LEVEL BUREAUCRATS MOST FAMILIAR WITH THE PROBLEM ARE, GENERALLY LIKE MOST LOWER LEVEL BUREAUCRATS, RELUCTANT TO CHANGE THEIR WAYS. FURTHERMORE, GENUINE POLICY TRADE-OFFS ARE OFTEN INVOLVED (FOR EXAMPLE, MORE EFFICIENT TESTING VERSUS SEVERE HEALTH OR SAFETY STANDARDS).

WHAT IS THE ACCJ DOING ABOUT ALL OF THIS ON A DAY-TO-DAY BASIS IN JAPAN?

FIRST, WE ARE WORKING VERY HARD AT TRYING TO PERSUADE THE JAPANESE BUSINESS COMMUNITY THAT IT IS IN JAPAN'S OWN INTERESTS AND THE INTEREST OF THE BUSINESS COMMUNITY TO RESPOND TO THE HEAVY CRITICISM NOW BEING DIRECTED TO JAPAN BY VIRTUALLY ALL OF ITS' TRADING PARTNERS. WE TRY TO MAKE THE POINT THAT IT IS NOT JUST THE UNITED STATES WHICH HAS BEEN CRITICAL ABOUT JAPAN'S CLOSED MARKET PLACE, BUT EVEN STRONGER CRITICISM HAS COME FROM THE EUROPEAN COUNTRIES AND FROM ITS OWN ASIAN NEIGHBORS. TAIWAN'S EXCLUSION OF MANY JAPANESE IMPORTS IS AN EXAMPLE OF AN ASIAN NEIGHBOR'S FRUSTRATION. I REMIND MY JAPANESE BUSINESS COUNTERPARTS THAT JAPAN HAS BEEN THE GREATEST BENEFICIARY OF THE FREE WORLD TRADING SYSTEM OVER THE PAST 30 YEARS BUT THE TIME HAS COME FOR JAPAN TO TAKE A MORE RESPONSIBLE AND A MORE OUTGOING ROLE IN THE TRADING EQUATION.

SECOND, WE ARE TRYING TO MAKE OUR JAPANESE FRIENDS RECOGNIZE THAT FOR THE UNDERSTANDABLE REASONS THEIR GAME FOR THE PAST 30 YEARS HAS BEEN TO SELL IN THE INTERNATIONAL MARKET PLACE AND TO BUY AT HOME AS REGARDS MANUFACTURED GOODS. WE ARE TRYING TO MAKE THEM UNDERSTAND THAT JAPAN'S TRADING PARTNERS ARE NOW SAYING THAT THE INTERNATIONAL TRADING ENVIRONMENT HAS CHANGED AND THAT IF JAPAN WISHES TO CONTINUE TO SELL IN THE INTERNATIONAL MARKET PLACE IT MUST ALSO BUY IN THE INTERNATIONAL MARKET PLACE.

THAT OBSERVATION OF COURSE RELATES PRIMARILY TO MANUFACTURED GOODS. IT IS FUNDAMENTAL TO JAPAN'S ECONOMY THAT IT CONTINUE TO IMPORT RAW MATERIALS BECAUSE IT HAS NO NATURAL RESOURCES OF ITS OWN. WE MUST EXPECT THAT JAPAN WILL CONTINUE TO BE EXPORT ORIENTATED

BECAUSE OF THIS FUNDAMENTAL CHARACTERISTIC OF ITS GEOGRAPHY. ON THE OTHER HAND, WITH THE HIGH POTENTIAL WHICH EXISTS IN THE JAPANESE MARKET, WE THINK IT IS QUITE POSSIBLE FOR JAPAN TO ACCEPT A MUCH LARGER SHARE OF IMPORTED GOODS AND TO PROVIDE SOME BENEFITS TO THE JAPANESE CONSUMER WHERE OUR PRODUCTS CAN BE COMPETITIVE.

AS YOU WOULD EXPECT, WE BELIEVE THAT MANY U.S. PRODUCTS CAN BE COMPETITIVE IN THE JAPANESE MARKET PLACE PROVIDED WE CAN GET PAST THE REGULATORY BARRIERS AND THE SOCIETAL BARRIERS AND CAN PENETRATE THE TIGHT WEBB OF RELATIONSHIPS BETWEEN JAPANESE COMPANIES. WE KNOW THIS CAN BE DONE BY AMERICAN COMPANIES BECAUSE WE HAVE MANY COMPANIES IN THE ACCJ WHICH OFFER VISIBLE EVIDENCE THAT SUCCESS IS POSSIBLE IN JAPAN.

THIRD, WE ARE REACHING OUT TO THE JAPANESE GOVERNMENT IN CLOSE COOPERATION WITH OUR OWN U.S. EMBASSY TO PROVIDE INFORMATION ABOUT HOW U.S. COMPANIES SEE THEIR PROBLEMS IN JAPAN'S MARKET PLACE. IN AN EFFORT TO COOPERATE AND TO FIND WAYS OF REDUCING THE TRADE FRICTION PROBLEM WE ASK THE JAPANESE GOVERNMENT AGENCIES TO EXPLAIN TO US WHERE WE HAVE MISUNDERSTANDINGS ABOUT THEIR LAWS AND PRACTICES AND AT THE SAME TIME ASK THEM TO ACCEPT OUR EVIDENCE OF DISCRIMINATORY PRACTICES AND TAKE APPROPRIATE ACTION TO REDUCE OR REMOVE THOSE UNOFFICIAL BUT VERY REAL TRADE BARRIERS.

IT IS, AFTER ALL, IN THE INTEREST OF THE U.S. COMPANIES ALREADY IN JAPAN TO REDUCE TRADE BARRIERS AND TO ELIMINATE ALL THE TALK ABOUT TRADE FRICTION. NOT ONLY WILL THIS ENHANCE OUR OWN BUSINESS OPPORTUNITIES, BUT SHOULD PROVIDE OPPORTUNITIES FOR MANY MORE AMERICAN COMPANIES TO DO WELL IN THE JAPANESE MARKET PLACE. TO THAT

END, THE CHAMBER IS NOW ENGAGED IN A JOINT STUDY EFFORT WITH THE TRADE STUDY GROUP, THE JAPAN EXTERNAL TRADE ORGANIZATION AND THE KEIDANREN, THE ASSOCIATION OF MAJOR JAPANESE CORPORATIONS, TO IDENTIFY POTENTIAL AREAS IN THE JAPANESE ECONOMY WHERE AMERICAN FIRMS MIGHT FIND PARTICULARLY ATTRACTIVE MARKET OPPORTUNITIES. THIS STUDY WILL FOCUS IN LARGE MEASURE ON THE SERVICES SECTOR BECAUSE PREVIOUS STUDIES BY THE CHAMBER WERE PRIMARILY DEVOTED TO THE MANUFACTURING SECTOR.

OUR MESSAGE TO AMERICAN COMPANIES IS THAT THE JAPANESE MARKET PLACE HAS HIGH POTENTIAL FOR THOSE COMPANIES WHO WILL ESTABLISH A PHYSICAL PRESENCE IN JAPAN AND MAKE THE APPROPRIATE FRONT END INVESTMENT NECESSARY TO GET STARTED. WE ACKNOWLEDGE THAT THE HIGH COST OF LIVING IN JAPAN REQUIRES AN ABOVE AVERAGE UP FRONT INVESTMENT AND IMMEDIATE, SHORT TERM RECOVERY OF THAT INVESTMENT IS NOT THE NORM IN JAPAN.

ON THE OTHER HAND, WE CITE THE PREVIOUS MAJOR STUDY BY THE CHAMBER IN 1979 WHICH PROVIDED EVIDENCE THAT AMERICAN COMPANIES WHICH HAD INVESTED IN MANUFACTURING FACILITIES IN JAPAN HAD, OVER A PERIOD OF TEN YEARS, AVERAGE MORE THAN 18% RETURN ON THEIR INVESTMENT. WE BELIEVE THAT KIND OF OPPORTUNITY IS STILL AVAILABLE IN JAPAN FOR AMERICAN COMPANIES WHO MAKE THE RIGHT KIND OF EFFORT AND INVESTMENT.

BEYOND THESE MESSAGES WE OFFER A NUMBER OF ACCJ PUBLICATIONS WHICH DESCRIBE AMERICAN BUSINESS EXPERIENCE IN JAPAN, REPORTS BY THE TRADE STUDY GROUP AND A NUMBER OF BOOKLETS WHICH PROVIDE INVALUABLE PRACTICAL ADVICE TO THOSE WHO ARE CONSIDERING ENTERING

THE JAPANESE MARKET. FINALLY, WE OFFER THEM OUR ADVICE AND COUNSEL AS A CHAMBER IN THE INTEREST OF HELPING THEM IDENTIFY THEIR MARKET POTENTIAL IN JAPAN.

I URGE THIS COMMITTEE TO RECOGNIZE THAT SOME VERY POSITIVE STEPS HAVE BEEN TAKEN BY THE GOVERNMENT OF JAPAN IN RECENT MONTHS TO RESPOND TO CRITICISM FROM ITS TRADING PARTNERS. FIRST, IT IS MY PERSONAL OBSERVATION THAT THE POLITICAL LEADERSHIP IN JAPAN HAS RECEIVED THE STRONG MESSAGE FROM THE POLITICAL LEADERSHIP IN THE UNITED STATES AND IN EUROPE AND THE PRIME MINISTER HAS PUBLICLY COMMITTED HIMSELF TO ACTIONS WHICH WILL MAKE THE JAPANESE MARKET MORE OPEN TO IMPORTED GOODS. LAST FALL PRIME MINISTER SUZUKI STATED THAT HE WOULD REALIGN HIS CABINET TO INSURE THAT HIS MINISTERS WERE SUPPORTIVE OF THE NEED TO RESOLVE THE TRADE ISSUE AND HE DID JUST THAT.

STARTING LAST YEAR THERE WAS CONSIDERABLE LIBERALIZATION OF CURRENCY REGULATIONS AND RESTRICTION ON FOREIGN EQUITY IN JAPANESE COMPANIES. THE LIST OF 99 TRADE BARRIERS WAS PUBLICIZED AND A PUBLIC COMMITMENT WAS MADE TO CHANGE A NUMBER OF REGULATIONS WHICH AFFECTED IMPORTED GOODS AND THE OTO WAS QUICKLY PUT IN PLACE. THE PRIME MINISTER HAS DIRECTED THE FAIR TRADE COMMISSION TO EXAMINE THE DISTRIBUTION SYSTEM WITH A VIEW TO REMOVING INEQUITIES FOR FOREIGN FIRMS. THE MAJOR ASSOCIATION OF LARGE JAPANESE CORPORATIONS IS ACTIVELY ASKING THE BUSINESS COMMUNITY TO SUPPORT THE GOVERNMENT MORE TO TRULY OPEN THE MARKET PLACE. THE MINISTER OF INTERNATIONAL TRADE AND INDUSTRY HAS REQUESTED THE JAPANESE BUSINESS COMMUNITY TO SUPPORT THIS NEW PROGRAM OF OPENING THE MARKET PLACE.

I THINK IT IS REGRETTABLE THAT WASHINGTON GENERALLY SEEMS TO GIVE VIRTUALLY NO CREDIT TO JAPAN FOR ANY OF THESE ACTIONS. IN MY VIEW

SOME ENCOURAGING WORDS WOULD HAVE BEEN HELPFUL EVEN AS WE WERE PRESSING STRONGLY FOR ADDITIONAL ACTION. ADMITTEDLY, THE JAPANESE GOVERNMENT HAS NOT MOVED AS QUICKLY AS WE WOULD LIKE ON SUCH BIG TICKET ITEMS AS TOBACCO, LEATHER, CITRUS OR AGRICULTURE, BUT I HAVE HIGH CONFIDENCE THAT THEY WILL TAKE FURTHER STEPS TO OPEN THEIR MARKETS FOR THESE PRODUCTS. WE MUST RECOGNIZE THAT TACKLING THESE COMMODITY AREAS HEAD ON WILL CAUSE SEVERE DISRUPTION AND PROBABLY UNEMPLOYMENT TO SOME SECTIONS OF THE JAPANESE ECONOMY AND CAN BRING SEVERE POLITICAL PENALTIES TO THE LIBERAL DEMOCRATIC PARTY.

I PERSONALLY BELIEVE THE PRIME MINISTER AND THE LIBERAL DEMOCRATIC PARTY ARE DEDICATED TO OPENING THE JAPANESE MARKET PLACE BUT WE MUST RECOGNIZE THAT THESE PROBLEMS HAVE TO BE RESOLVED WITHIN JAPAN'S POLITICAL FRAMEWORK AND INSTANT, DEMOCRATIC CHANGE SHOULD NOT BE EXPECTED.

WELL NOW, LET'S SUPPOSE THAT THE GOVERNMENTAL TRADE BARRIERS DO COME TUMBLING DOWN AND ADDITIONAL AMERICAN COMPANIES STEP UP THEIR EFFORTS TO EXPORT THEIR GOODS TO JAPAN. CAN WE EXPECT AN IMMEDIATE OR EVEN SHORT TERM IMPROVEMENT IN THE UNFAVORABLE TRADE BALANCE SITUATION WITH JAPAN? MOST OF US THINK NOT - FOR SEVERAL REASONS:

FIRST, OUR EUROPEAN FRIENDS IN PARTICULAR WANT TO INCREASE THEIR SHARE OF THE JAPANESE MARKET SO OUR INTERNATIONAL COMPETITION IN THE JAPANESE ARENA WILL BE EVEN MORE SEVERE IN A MORE OPEN MARKET.

SECOND, RECOGNIZING THE PROBLEMS IN JAPAN'S ECONOMY AT PRESENT, DOMESTIC DEMAND IS SLUGGISH AND WE SHOULD NOT EXPECT GREAT CONSUMER DEMAND FOR OUR GOODS JUST TO SATISFY OUR DEMANDS FOR A BETTER TRADE BALANCE.

THIRD, MOST AMERICAN COMPANIES ARE NOT EXPORT-ORIENTATED AND FOR THOSE INTERESTED IN JAPAN IT WILL TAKE SOME TIME FOR THE ACCJ, THE U.S. GOVERNMENT AND THE JAPANESE GOVERNMENT TO PERSUADE THESE COMPANIES THAT THE SITUATION AND THE RULES OF THE GAME IN JAPAN HAVE CHANGED AND THEY SHOULD COME BACK AND TAKE ANOTHER LOOK AT THEIR POTENTIAL IN JAPAN'S MARKET PLACE.

THE PROBLEMS WE FACE IN OUR ECONOMIC RELATIONS WITH JAPAN ARE NOT GOING TO BE SOLVED EASILY OR QUICKLY. WE NEED A LONG TERM APPROACH WHICH IS CONSISTENT WITH THE BASIC OBJECTIVES OF MAINTAINING THE FREE WORLD'S OPEN TRADING SYSTEM AND IMPROVING RELATIONSHIPS WITH OUR MAJOR ALLY IN THE FAR EAST.

WITHIN THIS FRAMEWORK OF U.S. NATIONAL INTERESTS, WE MUST PERSIST IN OUR NEGOTIATIONS WITH THE JAPANESE TO OPEN THEIR MARKETS. HOWEVER, THE ACCJ DOES NOT BELIEVE THAT ADDITIONAL LEGISLATIVE AUTHORITY IS EITHER NECESSARY OR DESIRABLE. A NEW SET OF TRADING RESTRICTIONS IN LAW PROBABLY WOULD BE MISUNDERSTOOD BY OUR GLOBAL TRADING PARTNERS, MISUSED FOR PROTECTIVE OR RETALITORY PURPOSES, AND WOULD BE VIEWED AS A U.S. STEP TOWARD BILATERALISM AND UNI-LATERAL DETERMINATION OF RECIPROCITY AND ACCESS AND AWAY FROM MULTI-LATERALISM AND CONTINUING LIBERALIZATION OF TRADE.

INSTEAD OF ADDITIONAL LEGISLATIVE ACTION, WE THINK THE CONGRESS SHOULD CHARGE THE PRESIDENT AND THE EXECUTIVE BRANCH TO USE THE AMPLE POWERS AVAILABLE IN VARIOUS TRADE LAWS AND THE EXISTING INTERNATIONAL ORGANIZATIONS TO PERSUADE THE JAPANESE THAT THEIR OWN BEST INTERESTS WILL BE SERVED BY TRULY OPENING THEIR MARKET PLACE. TO BUTTRESS THIS CONCLUSION, CONGRESS SHOULD SET UP A FORMAL REPORTING AND MONITORING SYSTEM IN COORDINATION WITH THE EXECUTIVE

BRANCH TO TRACK PROGRESS BEING MADE IN ACHIEVING MUTUALLY SATISFACTORY ACCESS TO THE JAPANESE MARKET. WE BELIEVE THAT THE LEGISLATIVE RECORD SHOULD REFLECT CONGRESSIONAL INTENT THAT SECTION 301 APPLY EQUALLY TO SERVICES AND INVESTMENT AS TO MERCHANDISE TRADE.

FOR LONGER TERM SOLUTIONS, WE MUST TAKE ACTION ON THE AMERICAN SIDE TO IMPROVE U.S. COMPETITIVENESS IN MANUFACTURED GOODS AND TO EXPAND THE U.S. PRESENCE IN JAPAN IN THE TRADE, INVESTMENT AND SERVICES SECTORS. AT THE SAME TIME, WE MUST INTENSIFY OUR DIALOGUE TO PERSUADE THE JAPANESE GOVERNMENT THAT JAPAN IS NO LONGER VIEWED AS A POOR, WEAK AND VULNERABLE COUNTRY AND THEREFORE JAPAN MUST:

-RECOGNIZE THE IMPORTANCE TO JAPAN AS WELL AS THE FREE WORLD OF MAINTAINING THE OPEN TRADING SYSTEM;

-EXERCISE LEADERSHIP IN KEEPING THE SYSTEM OPEN BY SETTING AN EXAMPLE IN REDUCING AND REMOVING NON-TARIFF IMPEDIMENTS TO TRADE, INVESTMENT AND SERVICES;

-CONVINCE THE JAPANESE BUSINESS COMMUNITY THAT MAJOR EFFORTS MUST BE MADE TO INTERNATIONALIZE THE THINKING OF THE CONSUMERS; TO MODIFY THE ATTITUDES OF THE BUREAUCRATS, BUSINESSMEN AND THE GENERAL PUBLIC TOWARD IMPORTS AS AN ESSENTIAL COUNTERPART TO EXPORTS; AND

-TAKE THE INITIATIVE TO EXPAND OPPORTUNITIES FOR FOREIGNERS TO PARTICIPATE IN THE GOVERNMENT RULE-MAKING PROCESS AS IT AFFECTS IMPORTS, SERVICES AND INVESTMENT.

IN CONCLUSION MR. CHAIRMAN, I WANT TO EXPRESS OUR ACCJ APPRECIATION TO YOU, THE COMMITTEE AND OTHER MEMBERS OF THE CONGRESS, BOTH SENATE AND HOUSE FOR YOUR INTEREST IN THE AMERICAN BUSINESS COMMUNITY PROBLEMS IN TRADING WITH JAPAN. WE ARE GRATEFUL FOR YOUR INTEREST AND WE SOLICIT YOUR CONTINUING SUPPORT.

WE BELIEVE THAT THE CURRENT, POSITIVE ATTITUDE OF JAPAN'S POLITICAL LEADERSHIP OFFERS THE BEST ENVIRONMENT IN A LONG TIME FOR OUR U.S. NEGOTIATORS TO RESOLVE MANY OF THE REGULATORY AND MARKET ACCESS PROBLEMS WHICH HAVE PLAGUED US IN JAPAN. WE BELIEVE MAJOR ACHIEVEMENTS ARE QUITE POSSIBLE AND MOST PROBABLE AND ADDITIONAL LEGISLATION WILL NOT BE REQUIRED TO OBTAIN THESE IMPROVEMENTS.

I APPRECIATE THE OPPORTUNITY TO APPEAR BEFORE YOU TODAY. I WELCOME THE OPPORTUNITY TO RESPOND TO YOUR QUESTIONS.

From The Japan Times dated 21 March, 1982

WHAT REALLY BOTHERS FOREIGN BUSINESSMEN IN JAPAN

Trade becomes New Nationalism, and Changes Have to Be in Basic Attitudes

By S.J. Kaufmann

(Mr. Kaufman is Chief Executive Officer of MacMillan Jardine (Japan) Ltd., which represents MacMillan Bloedel Ltd. and Export Sales Co., Ltd., both of which have a long history of selling in Japan. Mr. Kaufmann is a former official of the Canadian Department of Industry, Trade and Commerce and served in the Canadian Embassy, Tokyo, from 1970 to 1974. He has lived in Japan for nine years off and on. He is fluent in Japanese and is the current president of the Canadian Chamber of Commerce in Japan. The following article reflects his own personal view, not the chamber's opinion. - Editor)

I would like to offer a Canadian perspective on the trade dispute between Japan and the United States.

Japan has a long history of civilization. Art, literature, religion, commerce, industry and crafts all reached sophisticated levels early in Japan. Since the end of the war, Japan has opened up to international relations and trade with spectacular success. Japan is now on the verge of making truly significant contributions to the development of world history with an unprecedented impact beyond its borders. This is exciting for Japan and for countries like Canada on the Pacific rim in a position to reap the full benefits of this stimulus from a vital and dynamic Japan.

Japan's success has been based on the free trade flow of technology and trade. Despite Japan's heavy protectionism in the '50s and '60s, Japan was able to benefit from the free trade system. This free trade system is now threatened.

American Attitude Unfair

The reaction of Japanese politicians and public to the recent Esaki mission to the United States is one of indignant rejection of the notion that Japan is a closed market.

This attitude is not really fair or realistic. It shows a lack of understanding of the United States and of Japan's own position. The United States is not fundamentally obliged to buy Japanese products no matter how competitive these products are. Any government's fundamental obligation is to its national interest. Today the United States, the economic and technological benefactor of Japan, is hurting badly.

Japan has removed many of the trade barriers which existed before. However, Americans remember the many and various ways in which Japan protected its weak and growing industries until they were able to defend themselves. There is a natural tendency to want to do the same thing in the U.S. today to protect weaker U.S. industries and give them a chance to recover. The brilliant success of the Japanese automobile industry cannot be blamed for the low productivity increases in the U.S. industry. However, reducing the level of imports would certainly help the U.S. industry today.

It is also a fact that most Americans who struggled with Japan Inc. through the '60s are suspicious of Japanese trade liberalization. Furthermore, the U.S. is not the only country complaining about the closed nature of the Japanese market. The EEC, Taiwan, Hong Kong, Southeast Asia, Australia and others have the same complaint.

Market Here More Closed

Frankly, I feel Japan is a more closed market than the U.S. even today. Some of this is cultural and can't be changed, but to a large degree, attitudes and policies in Japan can change to accommodate the realities of a strong and confident Japan.

To those Japanese who genuinely believe that their market cannot meaningfully be opened further at this time I would like to describe my experience in forest products, Japan's second largest import after oil.

The world trade in forest products is overwhelmingly in the form of sawn lumber, pulp and paper, in other words, semifinished and finished goods. Japan, however, has the lion's share of the trade in forest product raw materials, logs and chips, and is a relatively small participant in the trade in manufactured products, i.e. less than 3 percent of the world's imports of sawn lumber, less than 1 percent of the world's imports of plywood and 70 percent of the world's imports of logs.

The dominant philosophy in the Japanese forest products sector is to import raw materials for processing in Japan - a form of "kako boeki" (importing raw materials and exporting processed goods). Imported manufactured wood products are less than 3 percent of Japan's total consumption. Yet at this very moment, there is a serious move afoot by politicians and elements in the trade to establish an "importers union" under government guidance to control the increase in wood product imports.

The Japanese domestic distribution system for paper is dominated by subsidiaries of the major Japanese paper manufacturers. The paper manufacturers, their subsidiary distributors, the major consumers and the trade press have traditionally been very close under the administrative leadership of the Ministry of International Trade and Industry. About a year ago an "Import association" was formed to ensure "an orderly flow" of forest products into Japan. This sounds honorable in theory, but in practice implies some degree of control of trade.

Book Exemplifies Atmosphere

Recently a book was published called "Kami no Kieru Hi" (The Day When Paper Disappears), attributed to the previous director of the paper industry section of MITI. This book implies that foreign companies are plotting against Japan, that paper imports threaten Japan's freedom of speech, and that companies that buy imported paper are a disgrace to Japan. The solution is for the trade to unite behind MITI's leadership. Considering the person who wrote it, this book is, to say the least, disturbing to companies such as ours which have a long history of stable dealings in Japan.

I was upset by the book but found on further consideration that this kind of atmosphere can be found in many market sectors in Japan. Companies importing products which are not raw materials but which compete seriously with Japanese products can be subject to this kind of ostracism from the industrial sector to which they belong. In "Kami no Kieru Hi" those trading company representatives who secure the supply of raw materials are "heroes". Those people who import finished products in competition with Japanese industry are practically traitors.

Whereas in North America an importer would be concerned only with potential profits from importing a competitive Japanese product, the Japanese importer is concerned about the impact of the imported product on the domestic sector to which he belongs. He is subject to MITI "guidance" so an import share of the size comparable with that of Japan-made cars or televisions in the United States would not be possible here. Despite Japanese government statements about welcoming imports, books like "Kami no Kieru Hi", allegedly written by an active bureaucrat, create suspicions about the attitudes and practices of government officials at many levels.

It is unfair to generalize. I have known some outstanding internationlist Japanese government officials. However, to a large extent, government activity has been a major cause of the low level of manufactured imports in Japan and consumers have not really fought for their rights to enjoy cheaper imported products. Tariff barriers exist everywhere, but in Japan there is little pressure from lobby groups to have tariffs lowered. The recent across-the-board reductions in tariffs are largely nominal. For example, the tariff for linerboard goes from 12 percent to 11.8 percent.

Bureaucratic regulations can often be an even greater barrier to trade. Some time ago the Canadian plywood industry tried to obtain acceptance in Japan for its softwood plywood, made from a species group not used for plywood manufacture in Japan. For a number of years a succession of Japanese government officials, university professors, etc., were invited to Canada at Canadian expense to study the standards and quality-control system in use in Canada and based on which Canada exports plywood throughout the world.

It was anticipated that the Japanese code would be revised in order to accommodate Canadian softwood plywood. The main end use intended was the two-by-four building sector, the dominant end use for Canadian softwood plywood in world markets. However, the Japanese code was written in such a way as to specifically exclude Canadian softwood plywood on an irrelevant technicality. Apparently this plywood code is under review again, but with examples like this it should not surprise anyone that statements by the Japanese government that certain NTBs are under study do not arouse enthusiasm from trading partners. In contrast, Misawa Homes obtained approval for its entire building system in Canada in three to four months.

Complex Inspection Procedures

It should be noted, too, that for Canadian plywood to be used in two-by-four construction, even if approved under the Japanese code, there are complicated inspection procedures required in Japan which duplicate what is done in Canada. Furthermore, each sheet of plywood has to be stamped on its face. If observed, this would significantly increase the cost of plywood to the consumer. A similar impractical reinspection system for lumber is largely ignored by the trade, but why have it in the first place?

There are undoubtedly explanations for the many restrictions and regulations which exist in Japan. Japan has the sovereign right to establish whatever regulations it wants. There are bureaucratic struggles between Japanese ministries. Certain agricultural or industrial sectors have heavy political clout, etc.

But this is not the time to explain the reasons for trade barriers. Furthermore, a publicity campaign to convince foreigners that the Japanese market is really completely open, or gestures such as the "67 items" which at least in the case of plywood avoid most of the basic problems, or nominal tariff reductions, will only increase suspicions abroad.

Instead, in view of Japan's large surplus, the Japanese government should take real initiatives, set real targets for manufactured goods imports, discourage the "import union syndrome" and the unnecessary bureaucratic regulations and restrictions, and take strong positions against petty interest groups.

Exports Equal Victory

Above all, the government should launch a propoganda campaign domestically against the attitudes that no longer belong in today's Japan: isolationism, mercantilism, "shimaguni konjyo" (insularism), "kako boeki-ism," and the siege mentality.

Too many Japanese see trade as a form of nationalistic competition - exports are a victory for Japan ingenuity and diligence. Imports of manufactured products are too often seen as a defeat caused by some Japanese deficiency, or natural disadvantage. The view of trade as a means of improving living standards through the international division of labor is far less prevalent in Japan than in the West. If Europe or the United States should suddenly establish a competitive advantage over Japan in a major and growing Japanese industrial sector - such as automobiles or electronics - what would be Japan's response?

I urge some soul-searching on the part of Japanese government and industry, some dramatic practical steps. The alternative may be a restriction in the free exchange of products and technology which is the lifeblood of the Japanese economic miracle.

I offer this advice as a Canadian because the Canadian economy is dependent on the continued success of the Japanese miracle. I am concerned that Japan is steering a course that will cause damage to Japan's interests as well as Canada's. I offer the advice also as an admirer of Japanese culture - original, dynamic, creative, oriented toward the pursuit of excellence, with so much to contribute if only it would have the courage to truly open up.

Senator **Danforth**. Clearly, there are a number of areas where the United States should be becoming more competitive. And, hopefully, it is. It is also clear, I think, that where we are competitive where we can produce a competitive product and sell it at a competitive price, we are still kept out of the depth. Maybe you are right. This constant begging and pleading and whining is going to be sufficient, but it seems to me to have a more systematic approach is really desirable. But there are just a limited number of times that you can go over and ask the things, to plead the things or threaten without losing all credibility.

We have sent over, as you know, an endless parade of American officials—Cabinet members, Members of the Congress—to tell the Japanese that we want changes. There have been a few, but it's just an unending problem.

And I also want to say this about my bill. It is not exclusively aimed at Japan. I think it has been viewed as that as we have a serious problem with Japan, but it really isn't. It's aimed at creating an ongoing mechanism to open up the market in Japan, Canada, Europe, wherever. It seems to me that to have a mechanism or tools available is just a better way of handling it than to use the gripe method with international relations.

I am sorry to say that I have got 3 minutes left to get over to the floor to vote. And I am going to have to leave. But I hope Senator Heinz is on his way right now. If you will stay where you are, we will not take a break, and Senator Heinz should be here soon.

Senator **Heinz**. Do any members of the committee have any questions? [Laughter.]

As far as I know, it was an excellent presentation.

General **Snowden**. Thank you very much. [Laughter.]

We are in agreement at that point, Senator. [Laughter.]

Senator **Heinz**. I understand that Senator Danforth has finished his questions. I thank you for being an extraordinarily good witness.

General **Snowden**. Thank you. May I apologize to you, sir, because I heard your request to the witnesses today. I am unable to respond to you in the details because having said that we don't want any legislation at all, we didn't agonize over all those words that are customarily done in this legislative process. We understand your concerns.

Senator **Heinz**. There's alway room for the church in the converted. One of these days we hope we can welcome you to the church.

General **Snowden**. Well, I thank you very much. We have churches over there, too. We would like to see you there. [Laughter.]

Senator **Heinz**. Thank you.

General **Snowden**. Thank you.

Senator **Heinz**. Our next witness is Mr. Steve Koplan.

STATEMENT OF STEPHEN KOPLAN, LEGISLATIVE REPRESENTATIVE, AFL-CIO

Mr. **Koplan**. I hope this goes as smoothly, Senator.

Senator **Heinz**. There might be another vote.

Mr. **Koplan**. Mr. Chairman, with me is Elizabeth Jager, trade economist of the AFL-CIO, who I am sure is no stranger to this subcommittee.

The AFL-CIO appreciates this opportunity to present its views on S. 2094, and other bills intended to establish reciprocity of market access as a key element of U.S. trade policy.

While we support the goal of this legislation, we are concerned that its approach diverts attention from the real problem. We believe that what is needed desperately is enforcement of existing laws, including remedies provided in the Trade Act of 1974. A change in trade policy can make reciprocity in trade at long last a reality. With nearly 10 million American workers unemployed, failure to enforce existing law results in greater U.S. imports of manufactured products than exports.

It is our view that existing law empowers the President to act effectively to assure fair trade. However, most administrations lacked the will to exercise that authority and the present administration is no exception. Rather, it is rapidly outdistancing its predecessors in unilaterally encouraging U.S. imports at the expense of American industries and jobs.

We appreciate the efforts of those Members of Congress who have introduced bills seeking to effect reciprocity and thereby raising public awareness that our existing trade policies have failed to achieve that goal. However, it is our belief that existing laws covering unfair trade practices such as dumping, and allowing for countervailing duties, were designed to establish fair and reciprocal trade. For example, section 125 of the Trade Act of 1974 provides in pertinent part that the President "may at any time terminate, in whole or in part, any proclamation made under this act."

Mr. Chairman, we believe that section 125, which provides the President with termination and withdrawal authority from trade agreements if utilized, amounts to adequate authority to address the problem of trade discrimination.

In addition, section 301, as amended, enables the President to take "all appropriate and feasible steps within his power to obtain the elimination of foreign countries' unreasonable trade restrictions or subsidies affecting U.S. commerce." We believe that section 301 covers trade in services as well as goods.

On February 4, you, Senator Heinz, introduced S. 2071, directed also at the problem of reciprocal market access. At that time, you listed numerous examples of barriers to trade taken from practices in a number of different countries. Those examples that you listed are set forth in their entirety in my testimony. And it should be included in full in the record of this hearing.

Senator **Heinz**. Without objection.

Mr. **Koplan**. Thank you.

While on the subject of foreign trade barriers let me add, Mr. Chairman, that the AFL-CIO endorses S. 2300, which provides for a strong response to the critical need for domestic content laws to reestablish a viable U.S. automobile industry. It is a fair bill designed to take automobiles and related parts off the list of endangered U.S. industries. Its passage is bound to have a positive ripple effect on the entire U.S. economy.

S. 2094 addresses the need for reciprocity, but in our view it unfortunately fails to create a mandate for action and enforcement. S. 2094 amends section 301 of the Trade Act of 1974 to require that the administration identify and measure the impact of foreign barriers on U.S. exports and investments whether or not prohibited by the GATT. The President would be encouraged to pursue remedies under current and internationally agreed upon dispute settlement procedures. Failing that, he would have authority to act against the imports, investment or services of the offending country. Thus, the bill is intended to enhance the broad retaliatory authority that already exists under section 301 of the Trade Act of 1974, as amended.

Mr. Chairman, we share your stated desire to secure more information on foreign trade barriers for the American public. We think that such procedural improvements are an excellent idea, but the administration has already opposed even the very mild proposals in S. 2094. The U.S. Trade Representative, Ambassador Brock, appeared before this subcommittee on March 24 to reemphasize that the administration supports only the "principle" of reciprocity in our trading relations. Furthermore, he warned that any legislation on reciprocity must be absolutely consistent with current obligations under the GATT. In addition, he urged that we must not enact laws which will force U.S. trade policy to require bilateral, sectoral or product-by-product reciprocity. However, we note that the administration has no such reciprocity standard in its trade legislative proposals.

For example, if I could summarize, the Caribbean Basin initiative is not in keeping with current U.S. obligations under the GATT yet the administration has announced that it is quite willing to ask for a GATT waiver to set up one way trade, funnelling imports from the world through the Caribbean countries into the U.S. market. This amounts to discrimination against U.S. industries and workers. Not reciprocity even in principle. The AFL-CIO opposes such action.

There is also a discussion——

Senator HEINZ. Without objection, though, your entire statement will be made a part of the record.

Mr. KOPLAN. Thank you, Mr. Chairman. I would just like to comment though on section 124 of the Trade Act. Section 124, as you know, Mr. Chairman, expired on January 3. There is legislation now pending in the Congress that would add an additional 2 years for giving the President tariff cutting authority. And we are very much opposed to that. And we have submitted our position in the House of Representatives already on that issue. I would just point that out to you. We have similar problems with that as we do with the Caribbean Basin initiative.

In sum, Mr. Chairman, the AFL-CIO believes that this Nation cannot afford a U.S. trade policy that substitutes rhetoric for effective programs and action to make reciprocity a reality. While some reciprocity proposals seek that goal, we believe enforcement of existing law and change in trade policy are long overdue. I thank you for letting me go over.

[The prepared statement follows:]

SUMMARY OF
STATEMENT OF STEPHEN KOPLAN,
LEGISLATIVE REPRESENTATIVE, DEPARTMENT OF LEGISLATION
AMERICAN FEDERATION OF LABOR & CONGRESS OF INDUSTRIAL ORGANIZATIONS
BEFORE THE SUBCOMMITTEE ON INTERNATIONAL TRADE, SENATE COMMITTEE ON FINANCE
ON S. 2094 AND OTHER "RECIPROCITY" BILLS

MAY 6, 1982

1) The AFL-CIO supports the goal of this legislation but we are concerned that its approach diverts attention from the real problem. We believe that what is needed desperately is enforcement of existing laws, including remedies provided in the Trade Act of 1974. With nearly 10 million American workers unemployed, failure to enforce existing law results in greater U.S. imports of manufactured products than exports.

2) S. 2094 addresses the need for reciprocity, but in our view, it unfortunately fails to create a mandate for action and enforcement. We do agree with the bill's provision to secure more information on foreign trade barriers for the American public. We think that such procedural improvements are an excellent idea.

3) The Administration has already opposed even the very mild proposals in S. 2094. It has no reciprocity standard in its trade legislative proposals. For example, the Caribbean Basin Initiative sets up one-way trade -- funnelling imports from the world through the Caribbean countries into the U.S. market. This amounts to discrimination against U.S. industries and workers -- not reciprocity even in "principle." The AFL-CIO opposes such action.

4) The Administration is also asking to extend the President's tariff-cutting authority under Section 124 of the Trade Act of 1974. The result will be to make U.S. tariffs even lower and encourage U.S. imports. The AFL-CIO is also opposed to extending Section 124.

5) The AFL-CIO believes that this nation cannot afford a U.S. trade

policy that substitutes rhetoric for effective programs and action to make reciprocity a reality. While some reciprocity proposals seek that goal, we believe enforcement of existing law and change in trade policy are long overdue.

STATEMENT OF STEPHEN KOPLAN, LEGISLATIVE REPRESENTATIVE, DEPARTMENT OF LEGISLATION AMERICAN FEDERATION OF LABOR & CONGRESS OF INDUSTRIAL ORGANIZATIONS BEFORE THE SUBCOMMITTEE ON INTERNATIONAL TRADE, SENATE COMMITTEE ON FINANCE ON S. 2094 AND OTHER "RECIPROCITY" BILLS

MAY 6, 1982

The AFL-CIO appreciates this opportunity to present its views on S. 2094, and other bills intended to establish reciprocity of market access as a key element of U.S. trade policy. While we support the goal of this legislation, we are concerned that its approach diverts attention from the real problem. We believe that what is needed desperately is enforcement of existing laws, including remedies provided in the Trade Act of 1974. A change in trade policy can make reciprocity in trade at long last a reality.

When AFL-CIO President Lane Kirkland testified before this Subcommittee last July he called attention to this problem: "Where other nations bar U.S. products through one means or another, the opportunity to enforce U.S. laws to gain access should be encouraged to even out the burdens in the world. Equivalent access to foreign markets is the key."

Subsequently, in February of this year, the AFL-CIO Executive Council stated, "vigorous enforcement of reciprocity provisions of the Trade Act must be undertaken."

With nearly 10 million American workers unemployed, failure to enforce existing law results in greater U.S. imports of manufactured products than exports.

It is our view that existing law empowers the President to act effectively to assure fair trade. However, most Administrations lacked the will to exercise that authority and the present Administration is no exception. Rather, it is rapidly outdistancing its predecessors in unilaterally encouraging U.S. imports at the expense of American industries and jobs.

Many times in the past, the AFL-CIO has come before the Congress asking for help to save American industries and jobs. Too often the responses have been too little or too late or not at all, and year after year the strong, broad-based industrial machine that was America has been weakened and its workers displaced, not because our industries have become obsolete, but because they have been overwhelmed by foreign trade practices.

We appreciate the efforts of those members of Congress who have introduced bills seeking to effect reciprocity and thereby raising public awareness that our existing trade policies have failed to achieve that goal. However, it is our belief that existing laws covering unfair trade practices, such as dumping and allowing for countervailing duties, were designed to establish fair and reciprocal trade.

In the Trade Act of 1974, a stated purpose of trade agreements affording mutual benefits is "to harmonize, reduce and eliminate barriers to trade on a basis which assures substantially equivalent competitive opportunities for the commerce of the United States."

Section 125 of the Act provides in pertinent part, that the President "may at any time terminate, in whole or in part, any proclamation made under this Act."

Mr. Chairman, we believe that Section 125, which provides the President with termination and withdrawal authority from trade agreements -- if utilized -- amounts to adequate authority to address the problem of trade discrimination. In addition, Section 301, as amended, enables the President to take "all appropriate and feasible steps within his power to obtain the elimination of foreign countries' unreasonable trade restrictions or subsidies affecting U.S. commerce." We believe that Section 301 covers trade in services as well as goods.

On February 4th, Senator John Heinz introduced S. 2071, directed also at the problem of reciprocal market access. At that time, he listed the following examples of barriers to trade, taken from practices in a number of different countries.

They include:

Restrictive standards and/or inspection requirements on goods like cosmetics, food additives, autos, tobacco, medical supplies;

Refusal to accept U.S. certifications on the safety of pharmaceutical exports;

Emissions testing -- or other testing -- of each imported auto -- or other product -- rather than testing a sample;

Prohibitions or restrictions on U.S. entry into key service fields like banking, financial services, and insurance,

Linking market access to a requirement to build production facilities in the country;

Requiring such production facilities to maintain a specified level of exports;

"Unexpected" or unannounced delays in unloading freight, including perishable products;

Limitations on the showing of U.S. films;

Discriminatory airport user charges or less advantageous airport locations for foreign airlines;

Exclusion from airline travel agency reservation systems;

Licensing requirements; and

Local content rules.

While on the subject of such barriers, let me add, Mr. Chairman, that the AFL-CIO endorses S. 2300, which provides for a strong response to the critical need for domestic content laws to reestablish a viable U.S. automobile industry. It is a fair bill designed to take automobiles and related parts off the list of endangered U.S. industries. Its passage is bound to have a positive ripple effect on the entire U.S. economy.

S. 2094 addresses the need for reciprocity, but in our view, it unfortunately fails to create a mandate for action and enforcement. S. 2094 amends Section 301 of the Trade Act of 1974 to require that the Administration identify and measure the impact of foreign barriers on U.S. exports and investment -- whether or not prohibited by the GATT. The President would be encouraged to pursue remedies under current internationally agreed-upon dispute settlement procedures. Failing that, he would have authority to act against the imports, investment or services of the offending country. Thus, the bill is intended to enhance the broad retaliatory authority that already exists under Section 301 of the Trade Act of 1974, as amended.

Mr. Chairman, we share your stated desire to secure more information on foreign trade barriers for the American public. We think that such procedural improvements are an excellent idea.

But the Administration has already opposed even the very mild proposals in S. 2094. The United States Trade Representative Ambassador, William E. Brock III, appeared before this Subcommittee on March 24th to re-emphasize that the Administration supports only the "principle" of reciprocity in our trading relations.

Furthermore, he warned that any legislation on reciprocity must be "absolutely consistent with current obligations under the GATT." In addition, he urged that "we must not enact laws which will force U.S. trade policy to require bilateral, sectoral or product-by-product reciprocity."

However, we note that the Administration has no such reciprocity standard in its trade legislative proposals. For example, the Caribbean Basin Initiative is not in keeping with current U.S. obligations under the GATT. Yet the Administration has announced that it is quite willing to ask for a GATT waiver to set up one-way trade -- funnelling imports from the world through the Caribbean countries into the U.S. market. This amounts to discrimination against U.S. industries and workers -- not reciprocity even in "principle." The AFL-CIO opposes such action.

We note further that when Ambassador Brock testified before the Subcommittee on International Trade of the House Ways and Means Committee on March 17th in support of the Caribbean Basin

Initiative, he stated that one reason for the Administration's proposal is because "there is uncertainty and fear in the Caribbean Basin about the future of the GSP [Generalized System of Preferences] program."

Mr. Chairman, as the Subcommittee knows, the GSP program provides for zero tariffs on U.S. imports of approximately 2,900 products and parts of products from about 140 nations and territories which are designated by the President as developing countries. According to 1981 trade data, the U.S. value of imports receiving GSP treatment has risen to $8.4 billion, up from $3 billion just six years ago. Most of these GSP benefits are now received by countries that should no longer be designated as developing countries.

At the AFL-CIO Convention last November, a Resolution on International Trade was adopted which stated in part: "The Generalized System of Preferences should be repealed. At a bare minimum, Congress and the Administration should remove import-sensitive products from the list, guarantee that only the neediest countries receive the benefits, and exclude communist countries."

If only the neediest countries are to receive GSP benefits, we believe that over the next two years, the top 10 countries now receiving the greatest proportionate share of GSP benefits should be graduated. In addition, two-digit product sectors should be graduated for all GSP countries whose per capita income is less than $1,400 if any GSP country's exports to the U.S. in a calendar year are in excess of $250 million in that product sector. Such product sector graduation is necessary if we are to prevent further losses of U.S. industries and jobs.

The Administration is also asking to extend the President's tariff-cutting authority under Section 124 of the Trade Act of 1974. The result will be to make U.S. tariffs even lower and encourage U.S. imports. Tariff cuts negotiated under the GATT Tokyo Round are being phased in over the eight-year period established by Congressional mandate. The AFL-CIO is also opposed to extending Section 124.

The fact is, Mr. Chairman, that the United States is suffering from rising imports in a wide variety of industrial products, while the economy is moving downward. This costs jobs, production and America's future development. Unfair trade arrangements encourage the expansion of production abroad for this and foreign markets, decimate small businesses unfairly and restrict U.S. exports.

In order to have reciprocal access for U.S. exports, trade policy must encourage efficient U.S. production of goods and services. Section 201 of the Trade Act provides that the International Trade Commission can recommend relief for an injured U.S. industry. The President has the power to seek relief and to act on recommendations of the ITC. However, the Administration has failed to act on behalf of any U.S. industry in a Section 201 case, with the exception of clothes pins.

In the area of subsidies and anti-dumping laws, the steel industry has petitioned the Administration for enforcement of national law and international rules against unfairly subsidized imports. We concede that the Administration can take credit for processing the claims. However, no other action has been taken. Yet the Trigger Price Mechanism established to regulate this trade has been removed. The world knows that there is subsidized foreign steel entering the U.S. market, Mr. Chairman. But despite the fact that employment in the U.S. steel industry is the lowest since the Depression year of 1933, the Administration has not initiated emergency action.

This Subcommittee is well aware that the U.S. auto industry faces unreasonable barriers abroad that have yet to be addressed. Japan's barriers offer the clearest, but by no means, the only example. Japanese barriers include:

*COMMODITY TAX -- The Japanese have a tax of about 20% on autos imported in Japan. The tax is higher for small cars than for large cars and was raised last year;

*INSPECTION -- "Costs of homologation and refinishing of the cars after landing also contribute considerably to the higher price of imported cars in the Japanese market." Source: Japan Automobile Manufacturers Association, Inc.

*DISTRIBUTION -- "The imported automobile business in Japan has long operated much like an exclusive jewelry business; they have catered to a special clientele and maintained high margins rather than aggressively expanding the volume of sales." (Same source.)

Generally, such barriers are simply not called to the attention of the American public. The net effect of such barriers is to restrict imports of cars to the Japanese market. However, the President has the authority to negotiate with Japan over these barriers. In addition, he has the authority to prod Japanese auto firms to invest in the U.S. To date, action is lacking.

Mr. Chairman, as the Subcommittee knows, many countries are not members of the GATT. Yet, U.S. trade policy continues unilaterally to abide by GATT principles for these countries, and to allow them privileged entry into the U.S. market. The continued effect of discriminatory trade standards applied by GATT and non-GATT members alike against U.S. interests at home, creates a continued erosion of U.S. industries. For example, U.S. firms continue to move to other countries and then export to the U.S. market because other countries require production in their markets and exports from their markets. U.S. trade policy encourages this erosion.

Often there is not even public discussion of such barriers because they are not widely reported. For example, within the past year Mexico, which is not a GATT member, has established new policies and practices that will curb U.S. exports of computers and data processing equipment. This is a high technology industry already threatened by U.S. failure to insist on U.S. rights to reciprocity with Japan and other GATT members. Further compounding this problem, Mexico now requires import licenses for computers and parts. In addition, Mexico has doubled its tariffs; imposed quotas; required production, research and development in Mexico, and taken other steps to assure that Mexico will be a self-sufficient computer exporter within five years. The U.S.

government is aware of these facts, but has not acted.

Mr. Chairman, the AFL-CIO believes that this nation cannot afford a U.S. trade policy that substitutes rhetoric for effective programs and action to make reciprocity a reality. While some reciprocity proposals seek that goal, we believe enforcement of existing law and change in trade policy are long overdue.

Senator HEINZ. Mr. Koplan, thank you. Is it fair to say, in your judgment, that unless the American working man and working woman believes that international trade is truly a two-way street that protectionist legislation—quotas, very, very strong performance requirements—very tough protectionist legislation would be an inevitability?

Mr. KOPLAN. Yes. You know our concern, Senator, and we have been fighting various battles this year—let me touch again on some of the legislation that we are so concerned about. The Caribbean Basin initiative, for example. We are not opposed to helping the people of the Caribbean Basin. In fact, we would like to see this Congress and the administration do that. But the one-way trade provision in title I of the Caribbean Basin bill is really designed, in our opinion, not to help the people of the basin, but to help multinationals. It contains a 25-percent content requirement, for example, when even under GSP if you combine two or more countries the content requirement is 50 percent—under the generalized system of preferences. The 25-percent content requirement in title I is simply going to enable multinationals to funnel U.S. imports through the basin, and that won't help the people of the region.

Senator HEINZ. I think we will probably have an opportunity to discuss that at another time.

Mr. KOPLAN. I would hope so.

Senator HEINZ. I, myself, have some reservations about parts of that initiative. But let me return to the reciprocity issue which is the subject of this hearing. Last July when Lane Kirkland appeared before the subcommittee to discuss U.S. trade policy, he said at that time that this country needed "a fair U.S. trade policy." In particular, he spoke to the need to achieve reciprocity, saying, "Where other nations bar U.S. products by one means or another, the opportunity to enforce U.S. laws to gain access should be encouraged to even out the burdens of the world. Equivalent access to foreign markets is key."

Can we, on the committee, assume that if we are able by passing strong reciprocity legislation—by having that reciprocity legislation enforced; by having it work—that if we are successful in that the American worker would not press for protectionist legislation?

Mr. KOPLAN. Ms. Jager would like to respond to you.

Ms. JAGER. Mr. Chairman, I don't quite understand the direction of the question because I don't think the definition of protectionist legislation is clear enough. People have called every bill that is put before the Congress protectionist because they don't agree with it. And I think that until there is a better understanding in the world, as you know and as Senator Danforth knows, that we can't simply continue to dodge on the basis of somebody calling us names. The American worker needs some evidence that there is reciprocal trade. And what I think we are saying is that unless there is evidence, we are not going to have a very fruitful result. The problem is that because they get called protectionist all the time, even when the GATT allows for action and law allows for action, you may get some very violent, restrictive legislation that would hurt you. And would hurt us. But I don't think that the use of the term "protectionist" is very fruitful either for the Congress or for the American worker.

Senator **Heinz**. A definition of protectionism—the general one—is a unilateral action on our part by legislation that would close a substantial part of the American market to other nations. That's protectionism.

My time has just about expired. I will just make one observation. Steve, in your remarks you said that the Reagan administration was unilaterally outdistancing its predecessors. That will not be easy even for the Reagan administration to achieve. You may recollect the fellow from Georgia who was President, and time after time the U.S. International Trade Commission recommended moderate, extraordinarily moderate, relief for one industry after another using section 201, the escape clause, the safeguard mechanism that we uniquely provide that is limited, temporary, aboveboard, transparent. And time after time those recommendations were either weakened to the point of near nonexistence or ignored. Let me tell you that I am not totally satisfied with the administration's policy on trade. We have a few minor little steel problems. Let the record show that the word "minor" was used with a sense of irony and sarcasm. [Laughter.]

Lest my steelworkers misunderstand. But even the Reagan administration will have a long way to go to match the record of the last administration.

Mr. **Koplan**. Senator, let me respond by saying, one, I appreciate your calling attention to the problems in the steel industry. And there is a discussion in my testimony of the very problem that you are talking about.

Senator **Heinz**. I am tempted to ask unanimous consent it appear in bold face type, but I think that would be out of order.

Mr. **Koplan**. Thank you. I would also say, Mr. Chairman—Senator Heinz—that in making the statement that the Reagan administration is unilaterally outdistancing its predecessors, we have in mind—and I know you will be getting into this in future hearings—but we have in mind the Caribbean Basin initiative legislative proposal. We see the Caribbean Basin initiative proposal as a way of simply extending the generalized system of preferences for another 12 years without any of the safeguards that are in GSP. Because as I had stated earlier under that proposal, any country, any multinational, is going to be able to funnel U.S. imports through the basin. And we feel that the real beneficiaries of that administration proposal will not be the people of the basin, but will be the multinationals at the expense of U.S. industries and American workers. So we are extremely concerned and vigorously opposing that legislation.

Senator **Danforth**. Thank you very much. We will put you down in the "no" column of the Caribbean Basin.

Mr. **Koplan**. I would like to ask one question if I could, Mr. Chairman. Has the subcommittee considered renewing, for example, section 126, which does contain authority for the President to act in the very areas that you are most concerned with? And I wonder about extending that provision, for example. And whether there has been discussion or consideration of that. I'm referring to the reciprocal nondiscriminatory treatment provided in section 126 of the 1974 Trade Act.

Senator **DANFORTH**. I am advised that that section applies to future negotiations rather than the other—granting concessions of one kind or another in return for something else.

Mr. **KOPLAN**. Well, I don't want to tie up your time now, but perhaps we could pursue this at another time.

Senator **DANFORTH**. OK.

Mr. **KOPLAN**. Thank you.

Senator **DANFORTH**. Thank you very much.

Mr. Samuel, I am told, is not here yet. The next witnesses are Mr. Edson de Castro and Mr. W. J. Sanders.

Gentlemen, please proceed.

STATEMENT OF EDSON D. de CASTRO, PRESIDENT, DATA GENERAL CORP.

Mr. **DE CASTRO**. Mr. Chairman, my name is Edson de Castro. I'm president and the founder of Data General Corp. of Westboro, Mass. Data General is one of the world's leading manufacturers of small computers and related equipment.

I am appearing before you this afternoon on behalf of the American Electronics Association. AEA is a trade association of more than 1,900 electronics companies in 43 States, mostly small businesses employing fewer than 200 people.

We welcome this opportunity to testify in support of assisting the U.S. Trade Representative in reducing barriers abroad for U.S. exports of products, services, and investment.

AEA has considered and analyzed the various Senate bills that have been introduced dealing with the subject of reciprocity. The association believes any legislation passed should:

First, be consistent with the GATT system and U.S. obligations under it;

Second, mandate and authorize the President to negotiate bilateral and multilateral treaties covering foreign direct investment and trade in services;

Third, expand the authority of the President under section 301 of the Trade Act of 1974 to respond to foreign barriers to U.S. foreign direct investment;

Fourth, call on the U.S. Trade Representative and the Secretary of Commerce to inventory foreign nontariff barriers to U.S. export of products and services, and to foreign direct investment;

Fifth, require periodic reports to Congress on the steps planned or taken to have these foreign barriers reduced or eliminated;

Finally, recommend special attention be focused on the high technology sector.

Since the creation of the GATT the United States has taken the lead in persuading our trading partners to adopt the GATT's basic multilateral principles of national and most-favored-nation treatment. AEA believes it absolutely vital that the United States not abdicate this leadership role. Action compromising this role would likely lead to greater barriers to our product exports. There are many countries which would welcome an excuse to erect new import restrictions. There are others which might feel compelled to retaliate if U.S. legislation were to affect their exports. And chances are good that our strongest, cost competitive exporters would be the ones to bear the brunt of either reaction.

The GATT currently provides for reciprocity under mutually agreed procedures and rules. AEA supports that process. We would thereby support legislation which would reinforce the U.S. commitment to that process.

AEA opposes legislation that would allow unilateral retaliation or require bilateral "reciprocity" outside the GATT on an industry or sector basis.

We are pleased to see proposed legislation to deal with the difficult area of foreign direct investment. For the last several decades the United States has led the way in getting other countries to reduce their tariff barriers to U.S. exports. As these tariff barriers have come down, however, new, more subtle nontariff barriers have appeared. Unfortunately, some of the most serious of the nontariff barriers are ones which are not covered by any multilateral rules; namely, restrictions to foreign direct investment.

In our industry, to sell computer systems or other high technology products to customers abroad, there must be a commitment to provide service and maintenance for the products we sell. We must have the ability to establish local subsidiaries for these purposes. It is for this reason that we view investment and trade as two sides of the same coin. The ability to invest in manufacturing, sales, and service operations is a primary vehicle of trade today.

For young companies such as ours, the most onerous of these are restrictions to our ability to establish local, majority-owned sales and service subsidiaries that we can manage properly. In an increasing number of countries we cannot now establish such subsidiaries unless we are willing to surrender majority ownership to a local partner and, hence, our control over operations.

There are a host of other restrictions on foreign direct investment, including requirements for export performance, local content, technology transfer, and so on. In combination, these restrictions make it unattractive for U.S. firms to invest. Unfortunately, in many cases a decision not to meet these demands may deny a U.S. firm full participation in the market.

Mr. Chairman, that concludes my statement. If there is a message with which I would like to leave you, it is this: We must aggressively enforce abroad our trade and investment rights and interests. We cannot afford to abdicate our leadership for free and open markets for trade and investment, and we must be forward looking and see to the needs of our strongest industries while they are still strong.

Viewed from our perspective, we no longer have the luxury of time. We need this legislation and congressional policy objectives now.

Senator **Danforth**. Thank you.

[The prepared statement follows:]

Statement of Edson D. de Castro, President
Data General Corporation

On Behalf of the

American Electronics Association

Before the Subcommittee on International Trade
Senate Finance Committee

May 6, 1982

Mr. Chairman and Members of this Distinguished Committee:

My name is Edson D. de Castro. I am President and one of the founders of Data General Corporation, based in Westboro, Massachusetts. Data General is one of the world's leading manufacturers of small computers and related equipment and services. Founded just fourteen years ago, we now employ more than 14,000 people. Our sales in 1981 were $740 million--about 35 percent of that from exports. We have grown at a rate of more than 30 percent annually, largely because our products increase the productivity of our customers.

I am appearing before you this morning on behalf of the American Electronics Association. AEA is a trade association of more than 1,900 electronics companies in 43 states. Our members manufacture electronic components and systems or supply products and services in the information processing industries. Our member companies are mostly small businesses currently employing fewer than 200 people.

U.S. exports of products manufactured and sold by AEA member companies have continued to grow. Over the six-month period of January through June 1980, there was a total of $2.7 $2.7 billion of exports of selected high technology products. This is an increase of more than 25 percent over the same period in 1979. While imports of similar products into the United States also enjoyed a health growth, the ratio of exports to imports remained at a high ratio of almost 3.5 to 1.

First, Mr. Chairman, I want to express AEA's appreciation for the leadership you and the members of this Subcommittee have shown in focusing Congress' attention and concern on the problems U.S. firms face abroad. We welcome this opportunity to testify in support of assisting the United States Trade Representative in reducing barriers abroad to U.S. exports of products, services and to foreign investment. We believe that this country must be forthright and aggressive in pursuing our trade and investment interests and rights. This, coupled with the trade enhancing tax measures you passed last year, will go a long way toward insuring the future competitiveness of U.S. electronics industries in world markets.

AEA believes that today we are at an important point of time for U.S. trade and investment policy. Great pressure is being placed on the GATT system of international trading rules because of what it does, and what it doesn't do. On the one hand protectionist forces, pointing to the visible effects of the current worldwide recession, are getting stronger both here in the U.S. and abroad. The political pressure is real to raise new tariff and nontariff barriers to product exports, and to reinforce existing ones. On the other hand, increased use of "industrial policies" is resulting in protectionist mechanisms that are not covered by the GATT rules, but which threaten to undo the significant progress made since GATT negotiations began in 1948.

Now is the time for the U.S. to do all it can to resist protectionism here and overseas by working to shore up the GATT system and to expand the system of international rules to cover foreign investment and services. By initiating and passing appropriate legislation, Congress can address this dual threat to continued expansion of world markets by providing our negotiators the statutory backup and policy guidance they need to be successful in this critical endeavor.

AEA has considered and analysed carefully the bills that have been introduced on the subject of reciprocity. We think it is important that any legislation in this sensitive area:

- be consistent with the letter and spirit of the GATT system and United States' obligations thereunder;
- mandate and authorize the President to negotiate bilateral and multilateral treaties covering foreign direct investment and trade in services;
- expand the authority of the President under Section 301 of the Trade Act of 1974 to respond to foreign barriers to U.S. foreign direct investment;
- call on the Trade Representative and the Secretary of Commerce to compile an inventory of foreign non-tariff barriers to U.S. exports of products and services, and foreign direct investment;
- requires a periodic report to Congress by the Trade Representative and Secretary of Commerce on the steps planned or taken to have these foreign barriers reduced or eliminated; and
- recommend special attention be focused on the high technology sector.

We hope that these principles will be included in the compromise bill which is presently being developed by the trade subcommittees and the Administration.

Consistency with the GATT

Since the creation of the General Agreement on Tariffs and Trade (GATT) the United States has taken the lead role in efforts to persuade our trading partners to adopt the GATT's basic multilateral principles of national and most-favored-nation treatment, and thereby reduce world barriers to product exports. In asserting this leadership role, Congress has deliberately chosen to lead by example by passing trade laws to mirror those of the GATT; I think that it is fair to say that without the U.S. commitment, there would be far more trade barriers abroad than there are today.

AEA believes it is absolutely vital that the U.S. not abdicate this leadership role. Any action that would compromise this role would likely lead to greater barriers to our product exports. There are many countries which would welcome an excuse to bend the domestic pressures and erect new import restrictions. There are others which might well feel compelled to retaliate if U.S. legislation were to affect exports negatively. And chances are good that our strongest, most competitive, exporters would be the ones to bear the blunt of either reaction. The negative consequences for jobs, income and related tax revenues could be enormous if this were to occur.

The GATT currently provides for reciprocity under mutually agreed procedures and rules. AEA supports that process. AEA therefore would support legislation which would reinforce the U.S. commitment to that process. We would thereby support its continued use in assessing whether a given country or group of countries is measuring up in an overall sense, given the specific circumstances, to its trade agreement or GATT obligation and responsibilities and thereby be eligible for future U.S. trade concessions.

AEA opposes legislation that would allow unilateral retailation or require bilateral "reciprocity" outside the GATT on an industry sector or product basis. Such legislation would fly in the face of GATT principles and obligations, and would invite protectionism and retaliation here and abroad.

FOREIGN INVESTMENT BARRIERS

For the last several decades, the U.S. has led the way in getting other countries to reduce their tariff barriers to U.S. product exports. As these feasible tariff barriers have come down, however, new, more subtle non-tariff barriers appeared. While the Tokyo Round MTN agreements addressed some of these non-tariff barriers, many remain.

Unfortunately, some of the most serious of the non-tariff barriers are ones which are not covered by any multilateral rules, namely restrictions on foreign direct investment. This situation has been in part caused and compounded by two factors.

One, U.S. international investment policy has been neutral. That is, U.S. policy has been one of neither encouraging nor discouraging flows of direct foreign investments, and Congress has chosen to lead by example and by avoiding barriers to foreign direct investment in the U.S. Unfortunately, we haven't coupled this exemplary role with aggressive efforts to see that it is followed by others. At the same time our negotiators attention has been focused on efforts to reduce barriers to products trade under the GATT.

This neutral and passive policy has been undergoing review and consideration by the Executive Branch, and we are encouraged by actions which signal its increased priority status on the United States Trade Respresentative's agenda.

Two, the public discussion of this issue is quite sensitive for U.S. firms. Companies do not complain openly because they fear retribution. For years they have had to grapple with investment restrictions on their own, due in large measure to the lack of an aggressive U.S. policy. In some counties, firms have been able to negotiate agreements, often skewed in favor of the host nation, but which at least give them some limited access. These arrangements are something less than secure and subject to change at any moment. Because they are so tenuous, most firms are understandably reticent to be identified publically with any criticism of the governments involved.

But that's not because the problem is not wide spread. It is. Restrictions on foreign direct investment are formidable, especially for the smaller firm.

In our industry in order to sell computer systems or other high technology products to customers overseas there must be a commitment -- made by us -- to provide service and maintenance for the products we sell. We must have the ability to establish local subsidiaries for these purposes. It is for this reason that we view investment and trade as two sides to the same coin. Their interaction is vital since it provides mutual support for each other in world competition. The ability to invest in manufacturing, sales and service operations is a primary vehicle of trade today.

For young companies such as ours, the most onerous of these are restrictions on our ability to establish local, majority owned sales and service subsidiaries that we can manage properly. In an increasing number of countries, we cannot now establish such subsidiaries unless we are willing to surrender majority ownership to a local partner, and hence, our control over the operations, and over our technology which we developed at great expense. The ability of an American company to take advantage of business opportunities in a rational and timely way is limited if it has to go back on every occasion to the"majority" owner and obtain approval for such actions. The majority owner may have no interest in or knowledge of the business and may be unable to appreciate the dynamics of situation as they arise.

There are a host of other restrictions on foreign direct investment, including export performance requirements, demands that a certain percentage of the final product contain materials or technology that is "sourced" locally, requirements that the foreign firm transfer the technology or "knowhow" either immediately or after a certain period of time, requirements for local training and conduct of R&D within the host country, and so on. In combination, these restrictions make it unattractive for U.S. firms to invest. Unfortunately, in many cases a decision not to meet these demands may deny a U.S. firm from fully participating in these markets.

Mr. Chairman, companies such as ours are not out simply to take advantage of an economy, and then exit without leaving anything behind. We are interested in complete, long term involvement in those economies, which means realistically contributing to the local infrastructure and technology base. But these contributions flow naturally from the demands of our business. They cannot be initated by government fiat. We have a mutual interest which can be met only by allowing a competitive, fast-moving business to be managed like one.

With these kinds of problems in mind, we strongly support legislation that would mandate and authorize our negotiators to seek bilateral and multilateral agreements to reduce the trade and capital flow distorting effects of such investment restrictions. In the short term, bilateral treaties are the practical solution. We would be following the practices of France, Germany, Japan and others in doing so. The longer term objective should be multilateral solution, based on the numerous bilateral arrangements that could provide the necessary momentum for new international rules.

HIGH TECHNOLOGY

If we examine our trade performance over the last two decades, it's clear that our R&D intensive, high technology industries are performing well in holding up the U.S. balance of trade. Our non R&D intensive less competitive industries are in trouble, some partly because of foreign industrial policies that targeted these sectors for special attention.

The U.S. has a distinct comparative advantage in high technology manufactured products and related services. Unfortunately, nearly all countries, industrialized as well as the Less-Developed-Countries, want to have their own high technology industries precisely because of the benefits the United States now reaps from them: new and better jobs, increased productivity, greater income and the better standard of living which results. Consequently, many governments have targeted this sector for intervention via industrial policies, combining protectionism and active support.

Our industries require a worldwide market in order to support the increasingly expensive R&D and capital investments needed to stay in the forefront of technology and meet customer needs. The U.S. needs to be aggressive on efforts to keep these markets open to competition based on price and quality, other than on national origin. If the U.S. does not, we run the risk of losing the enormous benefits that our technologies can bring to the United States and to other countries. In our industry, we're only seeing the crudest beginnings of what can be accomplished to improve productivity and raise the world's standard of living.

We are pleased that Ambassador Brock intends to place this sector on the agenda for the GATT Ministerial talks. In this regard we also support the provisions contained in S.2356, The High Technology Trade Act of 1982, co-sponsored by Senators Heinz, Hart, Cranston, Tsongas and others. AEA believes this legislation provides a comprehensive basis and approach for such negotiations, including the objectives of national treatment for foreign direct investment and tariff reduction authority for the President in these sectors. We recommend this legislation to you as a guide to legislative action you should take to provide Congressional authority and policy guidance.

INVENTORY OF NTBS TO PRODUCTS, SERVICES AND FOREIGN INVESMENT

AEA would support legislation to require the USTR and the Commerce Department to develop an inventory of the major non-tariff barriers abroad to U.S. product and service exports, and foreign direct investment. We also support provisions that would require periodic reports to the Congress on the steps the United States Trade Representative has taken, or plans to take, to have these barriers reduced or eliminated.

Mr. Chairman, that concludes my statement. If there is any message with which I want to leave you, it's this: We must aggressively enforce abroad our trade and investment rights and interests. We cannot afford to abdicate our leadership for free and open markets for trade and investment. We must be aggressive at home in resisting the temptation to raise trade barriers. And we must be forward-looking and see to the needs of our strongest industries before the weight of barriers abroad become so heavy as to be politically too difficult to eliminate. Viewed from our perspective, we no longer have the luxury of time. We need legislation and policy that addresses these objectives now.

Thank you again for this opportunity to testify. I'd be pleased to answer any questions you might have.

STATEMENT OF W. J. SANDERS III, PRESIDENT AND CHAIRMAN OF ADVANCED MICRO DEVICES, INC.

Mr. **Sanders**. Mr. Chairman and members of this distinguished committee, I am Jerry Sanders, the founding president and chief executive officer of Advanced Micro Devices, one of the 10 largest producers of semiconductor integrated circuits in the world. We have annual sales of over $300 million and employ more than 10,000 people. We were 13 years old Saturday.

I am here on behalf of the Semiconductor Industry Association, and I have come here today to testify that the legislation which you will shortly be drafting is of extraordinary importance to this country. It is vital to many industries.

If I leave you convinced of only one thing today, I hope it will be that trade legislation must be enacted this year, which will result in the opening of world markets to our exports and which will address more effectively industrial policies which disrupt these markets.

The semiconductor industry and the high technology industries as a group are probably the most severely affected by the new forms of market barriers that the Danforth bill is designed to address.

What is disturbing about this challenge is that ultimately we won't be able to compete successfully unless markets are opened and the effects of foreign industrial policies are dealt with.

Growing government intervention abroad undermines the reciprocal balance of our trade agreements. That erosion must be halted. Where U.S. companies and workers have high export potential, the bill reported by this committee must direct U.S. negotiating priorities to attack the market barriers that frustrate our ability to compete. This is especially true where a protected home market serves as the base from which foreign industries offer extremely aggressive competition in the United States and in third country markets.

This does not mean that the United States should set itself as the sole judge of prior agreements, unilaterally restructuring commitments. We must build upon the GATT framework, not tear it down; but we must now make an independent assessment of our national commercial interests, set priorities, seek new negotiations, and utilize existing rights aggressively if the GATT framework is to be respected and to endure.

Legislation based upon the Danforth, Heinz, and Bentsen bills can move us in the right direction. What is needed are procedures provided by statute to identify foreign market barriers, to establish national priorities, and to find solutions to obtain additional market access and national treatment. We also need a political mandate and a legal authority for negotiations.

Mr. Chairman, I would urge in the strongest possible terms that the High Technology Trade Act, S. 2356, introduced on April 1 by Senators Hart, Heinz, and Cranston and cosponsored by Senator Mitchell, before your committee now, be made an integral part of the legislative solutions that you provide.

We are a highly competitive industry, but we need world markets to maintain that position. We are increasingly being denied access to those markets governments have developed, and advanced developing countries, alike, have recognized the importance of the high technology industries, are increasingly protecting and promoting their own. We suffer the consequences of foreign industrial policies which distort international trade and investment. This is not only in terms of market access abroad; foreign industrial programs also provide foreign industries with an unfair advantage in gaining market share in other countries. This results in an anticompetitive environment. It prevents our industries from making the investments needed to compete successfully in the future in major product areas.

The fact is that our largest potential foreign market remains substantially closed to us. A Joint Economic Committee study published this February concluded that the Japanese market for semiconductors has an oligopolistic structure and does not function as an open market. The Government of Japan tolerates and even encourages the formation of cartels that result in these oligopolies. Japanese Public Law 84 of 1978 provides the statutory basis for their system.

The United States-Japan trade balance for semiconductors illustrates just how successful for them and how disastrous for us these policies have been. That is shown on the first chart.

Imports from Japan in 1981 climbed to nearly $400 million, while exports to Japan remained flat. This represents a complete reversal of our trade position with Japan. This does not represent a lack of competitiveness; it represents a closed market.

Actually, if allowed to compete on fair and equal terms, we are extremely successful in the marketplace. Semiconductor prices, until very recently, have followed a historic learning curve pattern with prices declining steadily over time as output expands and efficiency is achieved through experience. Our price-per-bit of memory has declined at a historic rate of 30 percent for each doubling of volume. Tracing a very steady pace, this means that we have brought down the price of memory 97 percent since 1973. That's what American free enterprise has done for the crude oil that dominates the information revolution. If the traditional crude oil had come down at the same rate, we would be paying 2 cents a gallon for gasoline today.

We are a competitive force. Competitiveness, innovation, and flexibility, however, can only take us so far. The continued viability of the U.S. semiconductor industry hinges on the openness of international markets.

In order to achieve an effective solution, the United States must adopt a comprehensive approach focused on the whole complex of trade investment problems peculiar to high technology. The High Technology Trade Act provides that approach and should be part of your bill. Its goal is to maximize openness of international markets to high technology trade and investment through negotiated agreements directed at eliminating existing barriers. It has as its objective that U.S. companies exporting to or investing in foreign countries will receive national treatment. The bill would also establish a monitoring system to measure the degree of openness of foreign markets and would strengthen the international trading system through more rigorous use of existing procedures under U.S. laws and trade agreements. The U.S. semiconductor industry has proven with each generation of new products its ability to innovate in both process and product design. We will continue to take whatever measures are necessary to maintain that innovative capability. Our industry is a $16 billion industry worldwide, growing at a 25-percent annual rate. The U.S. semiconductor industry is dedicated to the high road of a free and fair trade policy. We challenge our trading partners around the world to adopt that same policy. We need your legislation to back up that challenge.

Thank you.

[The prepared statement follows:]

TESTIMONY
of

W.J. Sanders, III
President and Chairman
Advanced Micro Devices, Inc.

On Behalf of the

SEMICONDUCTOR INDUSTRY ASSOCIATION

Before the

Senate Finance Committee
International Trade Subcommittee

May 6, 1982

Summary

Mr. Chairman, I have come here today to testify that the legislation which you will shortly be drafting is of extraordinary importance to this country. It is vital to many industries. If I leave you convinced of one thing today, I hope it will be that trade legislation must be enacted this year which will result in the opening of world markets to our exports and which will address more effectively industrial policies which disrupt these markets.

The semiconductor industry -- and the high technology industries as a group -- are probably the most severely affected by the new forms of market barriers that the Danforth bill is designed to address. What is disturbing about this challenge is that ultimately we won't be able to compete successfully unless markets are opened and the effects of foreign industrial policies are dealt with.

Growing government intervention abroad undermines the reciprocal balance of our trade agreements. That erosion must be halted. Where U.S. companies and workers have high export potential, the bill reported by this committee must direct U.S. negotiating priorities to attack the market barriers that frustrate our ability to compete. This is especially true where a protected home market serves as a base from which foreign industries offer extremely aggressive competition in the United States and in third country markets. This does not mean that the

United States should set itself as the sole judge of prior agreements, unilaterally restructuring commitments. We must build upon the GATT framework; not tear it down. But we must now make an independent assessment of our national commercial interests, set priorities, seek new negotiations, and utilize existing rights aggressively, if the GATT framework is to be respected and is to endure.

Legislation based upon the Danforth, Heinz and Bentsen bills can move us in the right direction. What is needed are procedures provided by statute to identify foreign market barriers, to establish national priorities, and to find solutions to obtain additional market access and national treatment. We also need a political mandate and legal authority for negotiations. Mr. Chairman, I would urge in the strongest possible terms that the High Technology Trade Act, S. 2356, introduced on April first by Senators Hart, Heinz and Cranston (cosponsored by Senator Mitchell) before your committee now, be made an integral part of the legislative solutions that you provide.

The Challenge

We are highly competitive, but we need world markets in order to maintain that position. We are increasingly being denied access to those markets. Governments of developed and advanced developing countries alike have recognized the importance of their high technology industries, and are increasingly protecting and promoting them. We suffer the consequences of foreign industrial policies which distort international trade and investment. This is true not only in terms of market access abroad; foreign industrial programs also provide foreign industries with an unfair advantage in gaining market share in other countries. This process in anticompetitive in result. It prevents our industries from making the investments needed to compete successfully in the future in major product areas.

The fact is that our largest potential foreign market remains substantially closed to us. A Joint Economic Committee Study published this February concluded that the Japanese market for semiconductors has an oligopolistic structure and does not function as an open market. The Government of Japan tolerates and even encourages the formation of cartels that result in these oligopolistic policies. Japanese Public Law 84 of 1978 provides the statutory basis for this system.

The U.S.-Japan trade balance for semiconductors illustrates just how successful -- and how disastrous -- these policies have been. (See Chart A) Imports from Japan in 1981 climbed to nearly 400 million dollars, while exports to Japan remained flat. This represents a complete reversal of our trade position with Japan. This does not represent a lack of our competitiveness. In Europe, the United States and in other markets, we are highly successful. In Japan, industry and government are content to have a Buy-Japan policy. This is not a cultural question. It is protectionism.

The Competitiveness of the U.S. Industry

If allowed to compete on fair and equal terms with our foreign counterparts, there can be no doubt of our industry's ability to maintain our long-term leadership position. We are cost-competitive, and we are world-leaders in technological innovation. But government support and easy access to low-cost capital allow Japanese producers to sell key commodity products in our market at very low prices; sometimes below the cost of production. The consequences in terms of price and market share are disastrous.

Semiconductor prices until very recently have followed a traditional learning curve pattern, with prices declining steadily over time, as output expands and efficiency is achieved through experience. Our price per bit of memory has declined at a classic rate of about 30 percent for each doubling of production volume, tracing a very steady, healthy downward slope. A more dramatic way of putting it is that between 1973 and 1981, we succeeded in reducing our cost per RAM (Random Access Memory) bit by about 97 percent.

When the Japanese entered the 64K RAM market in October of 1980, our price curve dropped from a 70 percent to a 19 percent slope. During 1981, the price of the 64K RAM fell from $25 or $30 per device, to about $6. The result of this dislocation in learning curve pricing will cost the industry billions of dollars in revenue. (See Chart B)

Part of the answer to international competition is in the area of U.S. domestic policies. Last year, you were instrumental in providing us with a much-needed tax credit for R&D. That is the type of measure that builds the domestic environment we need to maintain our competitive position. The results are already evident in the recent establishment of the Semiconductor Research Corporation for a cooperative effort to stimulate R&D and develop base technologies we need to remain competitive.

The Importance of World Markets

Competitiveness and flexibility can only take us so far. The continued viability of the U.S. semiconductor industry hinges on the openness of international markets to our companies and their products. Foreign markets account for half of the total value of semiconductors consumed worldwide. We need the volume represented by those markets in order to generate the funds we need for investment, research and development.

The semiconductor industry -- like all high technology industries -- requires enormous investments in capital equipment and research and development. With world demand for semiconductors growing at an annual rate of 25 percent, we need capital to expand production facilities. More importantly, our production technology changes, equipment becomes obsolete at a rapid rate, and our production process is becoming increasingly capital-intensive. Integrated circuit producers spend an average of 28 percent of sales on investment in equipment and research and development, compared to 7 percent for U.S. industry as a whole.

Our product designs change rapidly and our products have short lives. Since 1960, the basic process technology has undergone 19 separate design changes. We must invest a constant and substantial stream of capital in research and development of next generation products. We estimate that U.S. producers will have to invest over $100 million per firm on research and development and production facilities to produce the 64K RAM, and $150 to $200 million per firm for the 256K RAM.

If we had full access abroad, we would not only share in the most rapidly growing markets, but we would limit the ability of foreign producers to depress prices artificially during recessions in order to gain market share in our home markets.

The U.S. Response

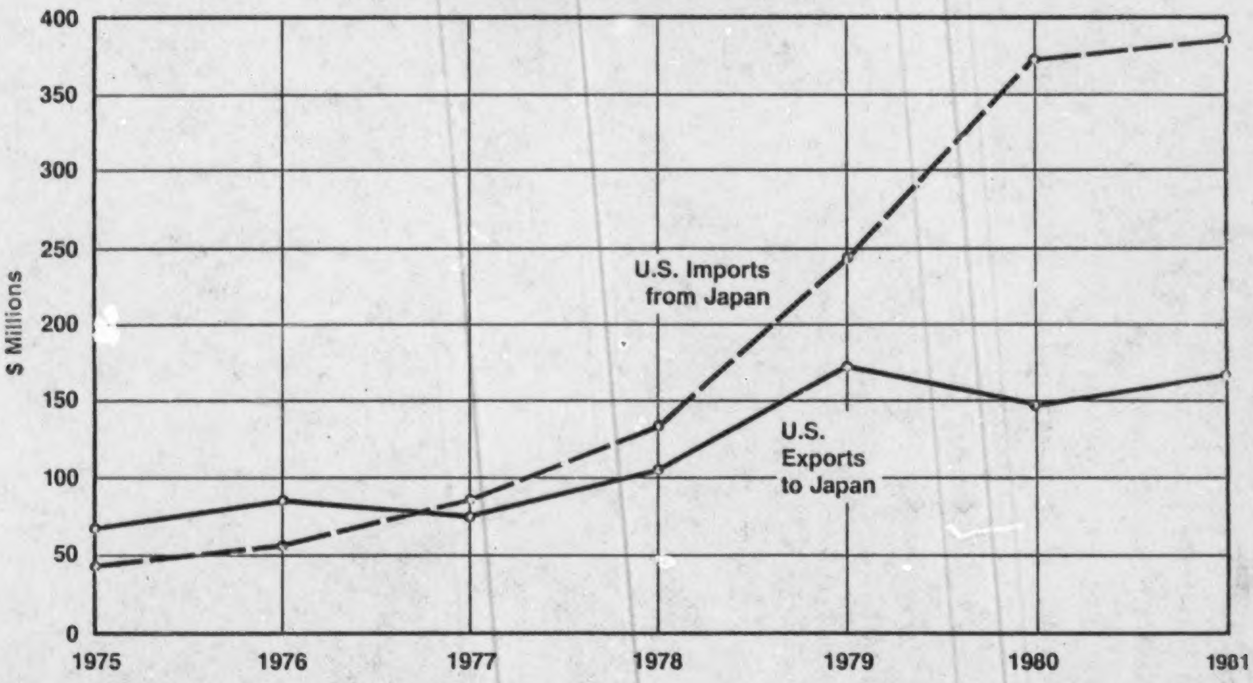
In order to achieve an effective solution, the U.S. must adopt a comprehensive approach, focused on the whole complex of trade and investment problems peculiar to high technology. The High Technology Trade Act provides that approach, and should be part of your bill.

Its goal is to obtain maximum openness of international markets to high technology trade and investment, through negotiated agreements directed at eliminating existing barriers. It has as its objective that U.S. companies exporting to or investing in foreign countries will receive national treatment. The bill would also establish a monitoring system to measure the degree of openness of foreign markets, and would strengthen the international trading system through more rigorous use of existing procedures under U.S. laws and trade agreements.

The U.S. semiconductor industry has proven, with each generation of new products, its ability to innovate in both process and product design. We will continue to take whatever measures are necessary to maintain that innovative capability. The U.S. semiconductor industry is dedicated to the high road of a free and fair trade policy. We challenge our trading partners around the world to adopt that same policy.

CHART A

U.S./JAPAN TRADE BALANCE
(Total Semiconductors)

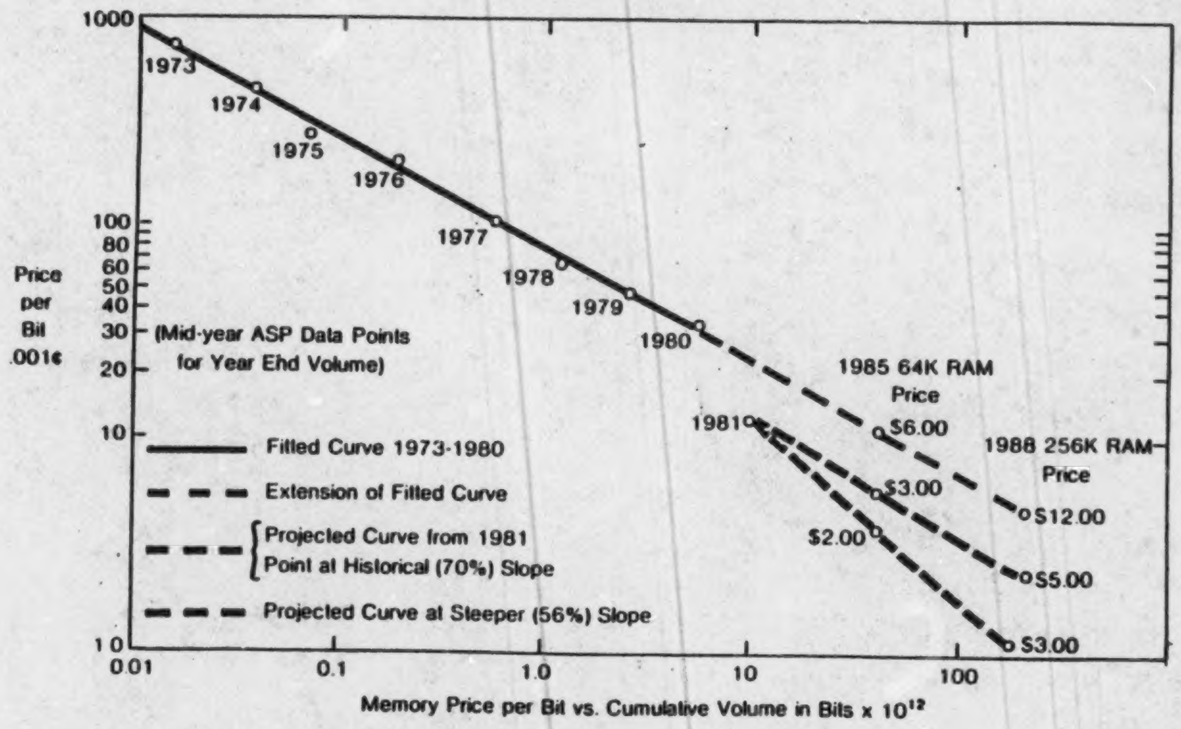


Data: U.S. Dept. of Commerce

March 1982

CHART B

Learning Curves,
Price per Bit vs. Cumulative Volume in Bits
Mos Dynamic RAMs



Introduction

I am here today to address the problems that S. 2094, the Reciprocal Trade and Investment Act of 1982, is designed to deal with. The semiconductor industry -- and the high technology industries as a group -- are the best examples of industries affected by the panoply of trade and investment barriers the bill addresses. It is vitally important that you prepare trade legislation that becomes law this year which will result in a major opening of world markets to our products, and will eliminate distortions in our home market due to unfair trade practices.

As leaders of the microelectronics industry, we are leaders of a revolution of the most profound kind -- a revolution that will radically and irrevocably alter the style and quality of human lives everywhere. Our progress is, however, not without obstacles. An Eighteenth Century mercantilist mentality is developing in many foreign capitals that threatens the well-being of the entire industry with discriminatory trade practices.

Having recognized the critical value of their high technology industries, foreign governments are increasingly adopting narrow nationalistic policies and, employing tariff and nontariff barriers and other trade-distorting measures in order to insulate their industries from foreign competition and expand their world market shares. With the U.S. as the most prominent exception, governments around the world are supporting their semiconductor and microelectronics-based industries as a national priority. They have adopted national policies and programs designed to provide a special economic environment beyond the benefits free market forces would generate. They seek to give their industries a competitive edge in the world market.

What is disturbing about this challenge is not the competition itself. This industry thrives on competition. What is disturbing is that ultimately we won't be able to compete successfully unless the gap is narrowed between the deliberately supportive, closed economic environment provided abroad and the environment existing in the U.S. Traditional American trade policies have stressed that performance, product quality, reliability and price -- not artificially imposed sanctions, subsidies and safeguards by governments -- should be the determining trade factors. We believe that these should be international standards as well.

Growing government intervention abroad undermines the overall reciprocal balance of the GATT. That erosion must be halted. Where U.S. companies and workers have high export potential, legislation based on the Danforth, Heinz and Bentsen bills can help set U.S. negotiating priorities to attack the barriers abroad that frustrate our ability to exploit our advantage. This does not mean that the United States should set itself as the sole judge of the balance of prior agreements, unilaterally restructuring commitments, or that we should make excessive use of the renegotiation provisions of the GATT. We must build upon the GATT framework; not tear it down. But we can make an independent assessment of our national commercial interests. We can set priorities, seek new negotiations, and utilize existing rights aggressively.

The legislation reported by this committee must clearly define the challenge we face, accurately assess the urgency of the situation, and correctly focus on effective and acceptable solutions: increased access to foreign markets for U.S. goods and investment, and the elimination of tariff and nontariff barriers, unfair foreign practices, and other trade-distorting policies and measures. For a long time our country has lead other nations in building an open international trading system. We cannot abandon that leadership position. We must recognize the short-comings in the system as it exists, and let others know that those short-comings cannot continue to exist.

Legislation based on the Danforth, Heinz and Bentsen bills can move us in the right direction. What is needed are procedures provided by statute to analyze foreign industrial policies and their effects, to identify foreign market barriers, to establish national priorities, and to find solutions to obtain additional market access and national treatment. It is essential that the trade legislation which emerges from your Committee contain certain crucial elements. What is needed is a political mandate and legal authority for negotiations to obtain:

- maximum openness of international markets to high technology trade and investment;
- the elimination or reduction of trade-distorting foreign government intervention;
- an end to public and private discriminatory procurement policies;
- the reduction or elimination of tariff and other nontariff barriers to high technology trade and investment;
- foreign government commitments to provide national treatment; and
- foreign government commitments to encourage joint scientific cooperation between U.S. and foreign companies.

In addition, we need a mechanism to identify and measure the openness of foreign markets, without relying on a petition process. Such a mechanism would target and analyze:

- trade and investment-distorting foreign industrial policies;

- foreign government policies or measures that deny national treatment to our firms or which are otherwise discriminatory;
- foreign government toleration or encouragement of anti-competitive practices;
- other measures which limit access to foreign markets for key products; and
- macroeconomic policies of the United States and foreign governments and foreign market structures which affect the competitiveness of our industry.

Mr. Chairman, I would urge in the strongest possible terms that the High Technology Trade Act, S. 2356, introduced on April first by Senators Hart, Heinz and Cranston (and cosponsored by Senator Mitchell) before your committee now, be made an integral part of the legislative solutions that you provide.

I am speaking for American companies who support the "high road" to international high technology trade. We want to see a lessening of mercantilist thinking that results in tariff and non-tariff barriers. We also support further openning of foreign investment opportunities in these countries and the provision of equal national treatment. Why? Obviously, it will help us out in the short run. In the long term it will provide for the strongest, most effective electronics industry worldwide.

No group of industries has a more direct effect on the national security, defense preparedness, industrial health, overall economic vitality and international competitiveness of the United States than the high technology industries. By definition, these are the industries investing most heavily in research and development and are the most progressive and highly innovative. These are the products and industries on the frontier of technological progress in a range of areas and product sectors. The microelectronics industry is expected to grow from $15 billion last year to $60 billion by 1990.

I have called semiconductor technology the crude oil of the 80s; the fuel that will power the equipment of the electronics and computer revolution. The electronics revolution is a global phenomenon. It is clear to me that it is in the best interests of all countries that the capability for producing the components that supply this industry should not be dominated by any one country. Only market forces -- unfettered by central planners -- can select the best among competing technologies.

I will make two points today. The first is that the United States semiconductor industry is highly competitive. We are asking not for protection or assistance, but only that the government defend our right to compete in the world market. Secondly, I will explain why our success--and perhaps even survival--is contingent on access to open international markets.

The Challenge

The issue is simple: we are highly competitive, but we need world markets in order to remain competitive. The problem is that we are increasingly being denied access to those markets. Foreign governments have recognized the importance of high technology industries to their national economies, their defense, and to their international competitiveness across a broad range of product sectors. They are increasingly promoting those industries through such measures as subsidization, tax incentives, and government-sponsored cooperation in production and research, while protecting them from foreign competition through a variety of tariff and nontariff barriers, investment performance requirements, denial of national treatment, toleration of restrictive business practices, and other trade-distorting measures. The market for integrated circuits and their end use products such as computers, telecommunication equipment, industrial automation equipment and consumer products, are the most dramatic targets of such government policies.

Our main concern right now is, of course, Japan. As far back as the early 1960's, the potential and value of microelectronics was recognized by the Japanese government, and it became one of several "target" industries -- an evolution of the "infant industry" philosophy. The focus was on limiting foreign competition through blocking foreign investments, and acquiring foreign technology.

As recently as 1978, the "Buy Japan" philosophy was further strengthened by the enactment of Public Law no. 84 -- designed to assist industry in the development of products selected by the Japanese government that fall into the categories of electronic devices, electronic computers, and computer software.

As part of this national policy aimed at promoting its high technology industries, in the semiconductor field the Japanese government coordinates a joint government-industry effort aimed at improving Japanese capacity and overtaking the U.S. lead in the fastest-growing segment of the market. In the area of computers, the Japanese Ministry of International Trade and Industry last month authorized eight major Japanese computer and electrical companies to form a research institute to develop a Japanese "super-computer" within the decade.

The European Community is developing a program of coordinated research, design and production, focused on microelectronics and aimed at achieving a unified European market and expanding its world market share. Individual European governments have targeted certain key industries like microelectronics, computer equipment, telecommunications, and bioengineering, and have launched what have been described as "some of the grandest industrial-aid programs since World War II." They are providing these industries with very high levels of funding for research and development, are tolerating and even encouraging anticompetitive behavior, are providing tax incentives such as credits for research and high depreciation rates for research facilities, and are restricting foreign exports and investment in their markets by discriminatory procurement policies, performance requirements, and other measures.

Nor is the problem limited to developed countries. The advanced developing countries -- particularly Mexico and Brazil -- are adopting similar policies. Brazil seeks to achieve the overall objectives of its National Development Plan by increasing its technological capabilities. The Brazilian Government is intervening in the international flow of technology for its national purposes by preventing foreign participation that might represent a competitive threat, while pressuring foreign firms to share advanced technology. These efforts are coordinated with a high level of government intervention aimed at strengthening the Brazilian industry, in the form of funding, tax breaks, technical assistance, dissemination of technological information, and formulation of R & D programs. Central to the effort to strengthen the indigenous technological capability of its industry is the Brazilian government's conditioning of foreign investment in industries like computers on the introduction over time of increased levels of Brazilian content.

Impact of "Target Industry" Programs on the U.S. Market

Foreign industrial policies are implemented not only through raising obstacles to imports. There are also serious consequences in terms of exports to our market. Figure 1 illustrates the price consequences in our market of these target industry programs. Shortly after the Japanese entered the market for the 16K RAM in mid-1977, the price curve dropped noticeably. Then in October of 1980, when they entered the 64K RAM market, that price curve dropped radically to a 19 percent slope, and price competition forced 16K RAM prices down. During 1981 the price of the 64K RAM fell from $25 to $30 per device to about $6. At those prices, U.S. companies are absorbing losses, and we are seriously questioning our ability to maintain adequate levels of investment. This dislocation of traditional learning curve pricing will cost the industry billions of dollars.

The consequences in terms of market share are equally disturbing. We remain unable to exploit the volume potential of foreign markets. Our largest potential foreign market remains substantially closed to us. A Joint Economic Committee Study published this February concluded that the Japanese market for semiconductors has an oligopolistic structure and does not function as an open market. The Government of Japan tolerates and even encourages the formation of cartels that result in these oligopolistic policies. Japanese Public Law 84 of 1978 provides the statutory basis for this system.

The U.S.-Japan trade balance for semiconductors -- Figure 2 -- illustrates just how great, and how disastrous, these policies have been. Imports from Japan in 1981 climbed to nearly 400 million dollars, while exports to Japan remained flat. This represents a complete reversal of our trade position with Japan. In Europe, the United States, and in other markets, we are highly competitive and highly successful. Japanese industry and government are content to have a Buy-Japan policy at home. This is not a cultural question. It is protectionism. These protectionist policies are preventing us from penetrating their home markets, while providing them the springboard for extensive penetration and disruption of our market.

The Competitiveness of the U.S. Industry

Our industry is highly competitive. If allowed to compete on fair and equal terms with our foreign counterparts, there can be no doubt of our ability to maintain the leadership position we have occupied since our industry's inception. We are cost-competitive, and we are competitive in technological innovation.

Semiconductor prices until very recently have followed a traditional learning curve pattern, with prices declining steadily over time, as output expands and efficiency is achieved through experience. In the earliest developmental and production stages of a device, yield ratios are typically low and unit prices high. Prices fall rapidly in the early years of commercial production, and then decline more slowly as the market matures, unit costs fall less rapidly, and competition drives prices down. As you can see from Figure 3, our price per bit for memories has declined at a classic rate of about 30 percent for each doubling of production volume, tracing a very steady, healthy 70 percent downward slope. A more dramatic way of putting it is that between 1973 and 1981, we succeeded in reducing our cost per RAM bit by about 97 percent. Figures 4 and 5 put this price trend in a broader economic context. The rate of inflation in the U.S. economy highlights the counter-inflationary trend in semiconductor prices. Even in the worst of times, our performance has contributed to fighting inflation.

Our productivity record, as measured by the value added per employee, is spectacular. While productivity of the US. economy as a whole stagnated during the late seventies, productivity in the semiconductor industry increased at an annual rate of over 22 percent. Figure 6 shows at a glance how striking our performance has been, compared to that of the U.S. economy.

The technological competitiveness of our industry -- our rate of innovation -- is revealed by the rate at which we have introduced new products. Since 1971 U.S. manufacturers have produced four successive generations of computer memory devices. The U.S. industry leaders have succeeded in quadrupling memory capacity about every 2 or 2 1/2 years.

Moreover, our industry has demonstrated a high degree of flexibility and vitality in adjusting and responding to the pressures of international competition we have faced since the late 70's. We have been able to expand capacity and to maintain the required level of research and development in the short-term through market restructuring, and have been willing to invest increasing amounts of money in expanding capacity and research and development -- more than matching Japanese efforts -- during the recent recession and price suppression.

Last year your committee was instrumental in providing us with much-needed tax credits for R&D. We need those measures to build the domestic environment that will permit us to maintain our competitive position. The results are already evident. Recently, under the auspices of SIA, many of the best known leaders in the semiconductor and computer industries, including myself, have decided to join forces in a unique way. Incorporated in California as a non-profit organization we have become the Semiconductor Research Corporation (SRC). Our mission is to stimulate joint research in advanced semiconductor technology by industry and universities, to encourage increased efforts by manufacturers and universities in long-term semiconductor research, to add to the supply and quality of degreed professional people, and to channel more funds into research. Other initiatives will be forthcoming.

The Importance of World Markets

Competitiveness and flexibility can only take us so far. The continued viability of the United States semiconductor industry hinges on the openness of international markets to our companies and their products. The focus of our production and marketing is of necessity on the global market, and maximum access to that market is absolutely crucial. We need open international markets because of the size and distribution of the world market, because of the nature of our production process, and most importantly, because of the available economies of scale and our need for investment capital.

Foreign markets account for half the total value of semiconductors consumed worldwide. This fact alone underscores the importance of these markets for American firms. Figure 7 tracks consumption of semiconductors. The top curve is total world consumption. Below that is U.S. consumption, and then Japanese consumption. Of total worldwide consumption of $15 billion dollars in 1981, more than half -- $9 billion -- represents foreign markets. We need the volume represented by those markets in order to stay on the learning curve and capture cost efficiencies. In order to understand the importance of volume production, look at Figure 8. It highlights the direct relationship between production volume and average price for successive generations of random access memories.

The availability of a large market is a critical requirement for success in our industry. The fundamental economics of our industry revolve around the cost economies and experience gained by volume production. A loss in world market share will result in a loss of international competitiveness for the U.S. semiconductor industry, and in a loss of U.S. international competitiveness across a whole range of advanced products. Decreased market share lowers our profits, adversely affecting research and development funding. That means a slower rate of new product discovery and development, which will mean a further loss of market share.

U.S.-manufactured semiconductors are identical to foreign devices in terms of performance, quality and reliability. From the consumer's point of view, there are no distinguishing elements which might limit our ability to sell in a particular market. The world market is the appropriate one for us.

It is our process innovation and product development that established us as world leaders in this area and has allowed us to maintain that position. To stay on the forefront requires enormous research and development and investment expenditures. With world demand for semiconductors growing at an annual rate of 25 percent, we need capital to expand production facilities. More importantly, our production technology changes and equipment becomes obsolete at a rapid rate. Our average age of installed equipment declined 25 percent between 1975 and 1979 to 4.4 years. Our production process is becoming increasingly capital-intensive. Gross plant and equipment expenditures per employee were about $11 thousand in 1976, and rose to $15 thousand in 1979, despite significant increases in industry employment. The Joint Economic Committee study published in February reported that in an effort to prepare for 64K RAM production, the top ten Japanese producers spent $775 million in 1980 on plant and equipment--17 or 18 percent of sales, while the top ten U.S. producers spent $1.2 billion--more than 20 percent of sales. Integrated circuit producers spend an average of 28 percent of receipts on investment in equipment, research and development, compared to 7 percent for U.S. industry as a whole. Advanced Micro Devices's combined research and development and capital expenditures in the year which ends March 31 should exceed 40 percent.

Our product designs change rapidly and our products have short lives. Since 1960, the basic process technology has undergone 19 separate design changes. Few industries have experienced such a rapid change in basic production technology in such a short time. Improvement in semiconductor product quality is an ever-increasing necessity. Now we're using semiconductors for more demanding tasks. Reliability cannot be achieved without high quality in the design and manufacturing process. To achieve this quality we depend on the best available tools and automation. This adds to capital cost substantially.

To remain competitive in an industry where sales are concentrated in the most advanced products means that we must invest a constant and substantial stream of capital in research and development of next generation products. If we do not, our leadership position will be short-lived. Compared to an average investment by U.S. industry as a whole of 3 percent of sales, U.S. semiconductor producers currently invest an average of 9 percent of their revenues in research and development. We estimate that U.S. producers will have to invest over $100 million per firm on research and development and production facilities to produce the 64K RAM, and $150 to $200 million per firm for the 256K RAM.

Other governments have obviously understood the direct relationship between market share and research and development. It is the fundamental proposition on which they have formulated their policies of promoting and funding research and development and protecting their domestic industries. Foreign government efforts have been concentrated in memories--the fastest growing segment of the market. This is the segment which has historically generated technology and production experience and profits which have benefited a broader range of products.

In other words, if foreign government policies and practices continue to deny U.S. access to world markets, the result will be a loss of U.S. technological superiority over a whole range of products. The Japanese market alone could amount to 35 to 40 percent of world demand. If that market remains substantially closed, our Japanese competitors, backed by government support, will benefit through lower cost due to experience at a much faster rate than our firms, while denying us access to the market we need to match them.

The U.S. Response

In order to achieve an effective solution, the United States must adopt a comprehensive approach, focused on the whole complex of trade and investment problems peculiar to high technology, and directed at ensuring open international markets for our products and investments. The High Technology Trade Act adopts that approach.

Its goal is to obtain maximum openness of international markets to high technology trade and investment, through negotiated agreements directed at eliminating existing barriers. It has as its objective that U.S. companies exporting to or investing in foreign countries will receive national treatment. Equal national treatment should extend to all areas. For example, just as a Japanese production affiliate in the U.S. receives the advantages of our capital markets, our infrastructure supporting semiconductor production, and the ability to compete for our university graduates, so too should an American production affiliate in Japan be accorded treatment equivalent to that received by Japanese semiconductor firms. American firms should receive treatment equivalent to domestic firms: access to financing at competitive rates, bureaucratic processing of subsidiary filings with the government, and the ability to recruit top Japanese engineering talent.

The bill would also establish a monitoring system to measure the degree of openness of foreign markets, and would strengthen the international trading system through more rigorous use of existing procedures under U.S. laws and trade agreements to respond to remaining trade distorting policies or measures. The U.S. government, along with industry, needs to take action. The U.S. needs to monitor much more closely foreign predatory pricing and other unfair trade practices that result in unwarranted increases in U.S. market share. We must be prepared to respond appropriately to these unfair trade practices. By doing so, we can make sure U.S. manufacturers have an opportunity to compete in a free fair-trade environment.

The High Technology Bill is an important adjunct to the subject of these hearings. The concern addressed in the Danforth, Heinz and Bentsen bills are extremely important and welcome. The legislation that you draft provides opportunity to strengthen the international trading system. New barriers are becoming increasingly important. We need to refocus our energies as a nation on understanding foreign industrial policies and their effects on our trade and investment, and on obtaining truly open markets. This does not mean that the GATT rules are not of continuing value. But the current international trading system will not endure unless a major effort is made to assure that the fruits of past negotiations are not rendered worthless by newer forms of government intervention.

Remaining passive will not preserve the status quo. The openness of markets is eroded whenever international rules are unclear or do not apply. That is why we are here today asking that Congress pass trade legislation -- not to retaliate against foreign practices, but to set national trade priorities, to examine foreign practices and their impact on our industrial base, and to give the President a badly needed mandate to find solutions.

The U.S. semiconductor industry will continue to provide world markets with innovative, cost-effective, high-quality products. We will continue to invest in the research and development necessary to maintain our technological leadership. We will continue to invest in new plants and equipment to provide the capacity necessary to meet the growing demand for our products. We are dedicated to being cost competitive with suppliers from around the world and to providing products with quality second to none. The U.S. semiconductor industry has proven, with each generation of new products, its ability to innovate in both process and product design. We will continue to take whatever measures are necessary to maintain that innovative capability. The U.S. semiconductor industry is dedicated to the high road of a free and fair trade policy. We challenge our trading partners around the world to adopt that same policy.

FIGURE 1

Dynamic RAM Experience Curve

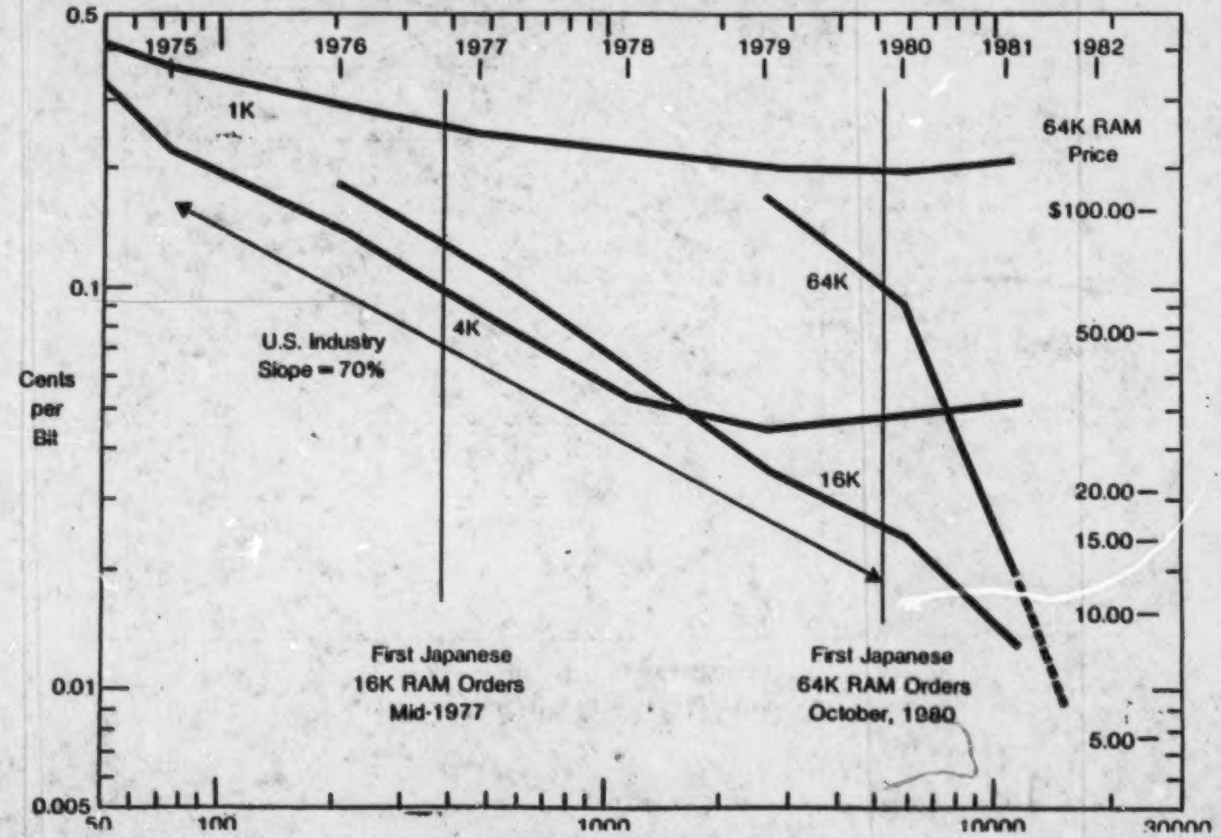
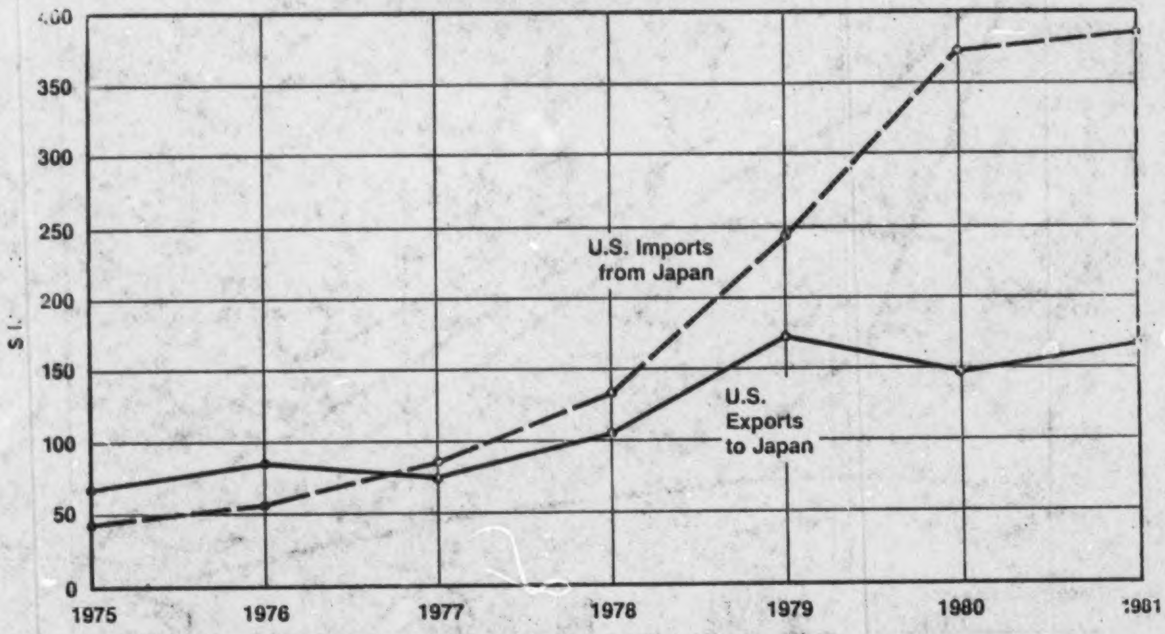


FIGURE 2

U.S./JAPAN TRADE BALANCE
(Total Semiconductors)



Data: U.S. Dept. of Commerce

March 1982

FIGURE 3

Learning Curves,
Price per Bit vs. Cumulative Volume in Bits

Mos Dynamic RAMs

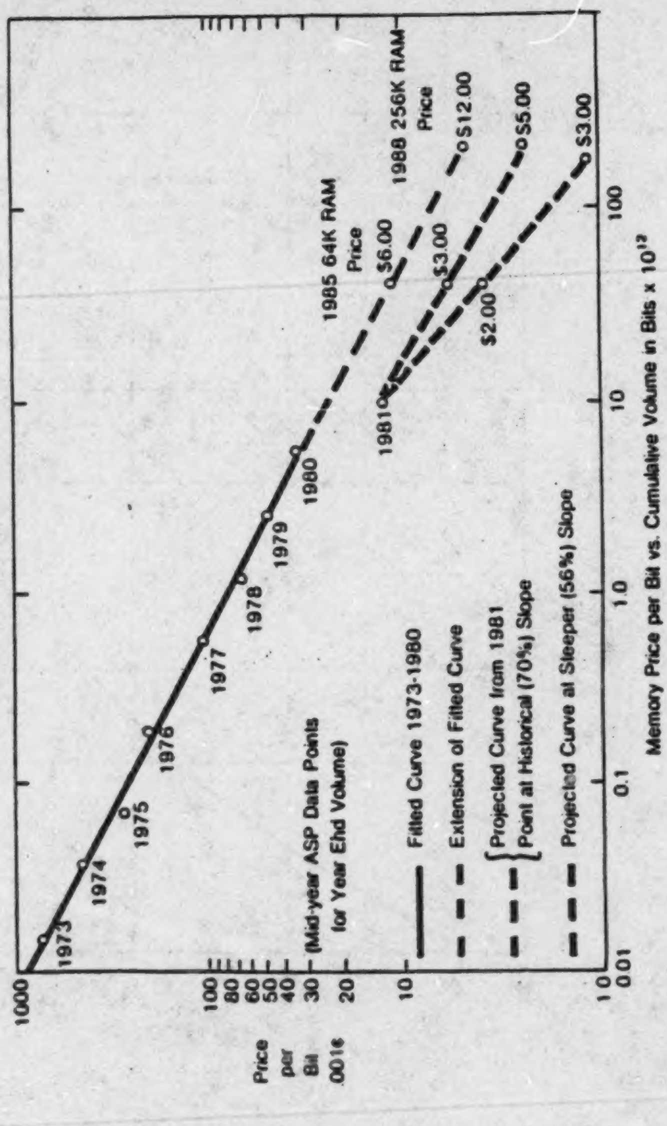
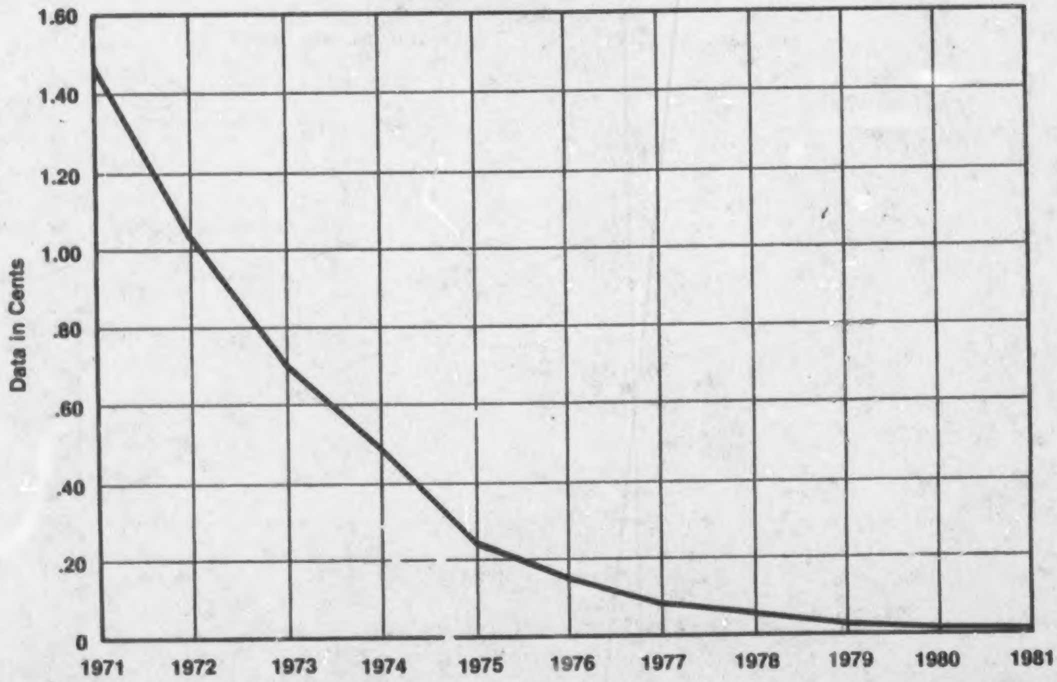


FIGURE 4

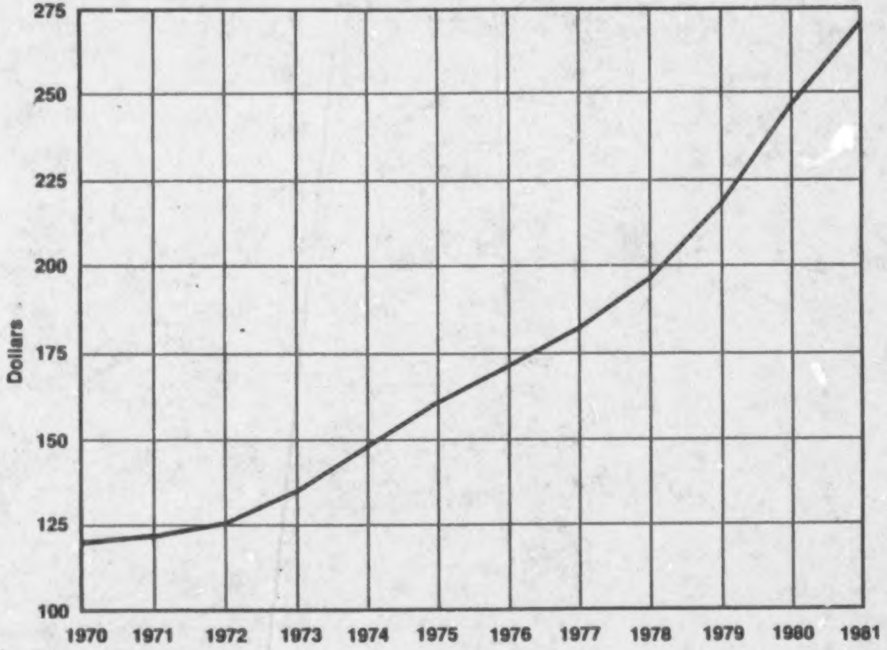
MOS RAM PRICES
(Per Bit in Cents)



021COR-450A

FIGURE 5

CONSUMER PRICE INDEX



(Base 1967 = 100)

021COR-448A

FIGURE 6

Comparison of U.S. Productivity Trends 1975–79

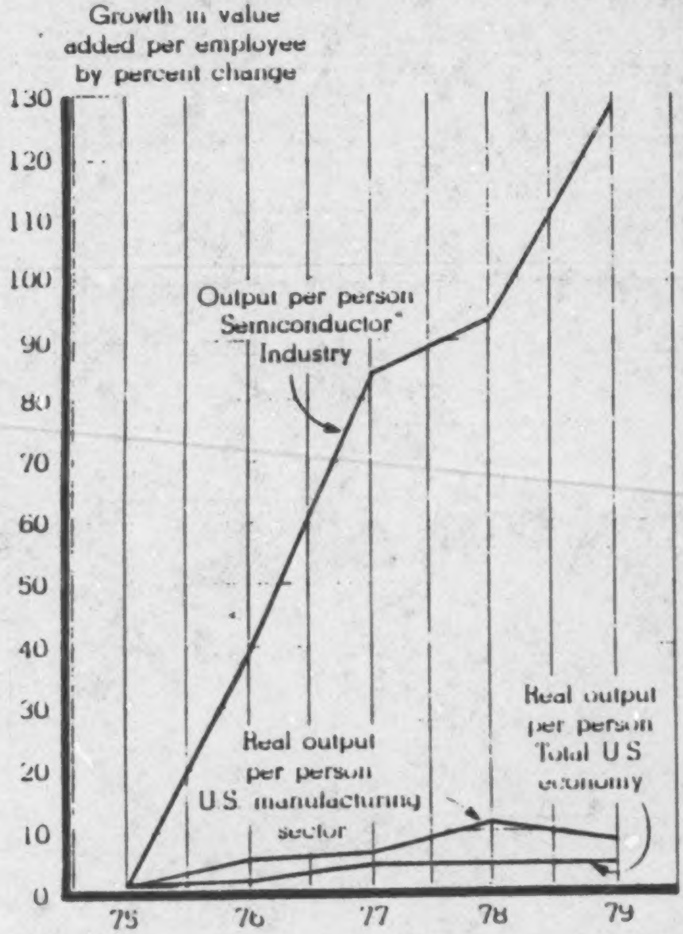
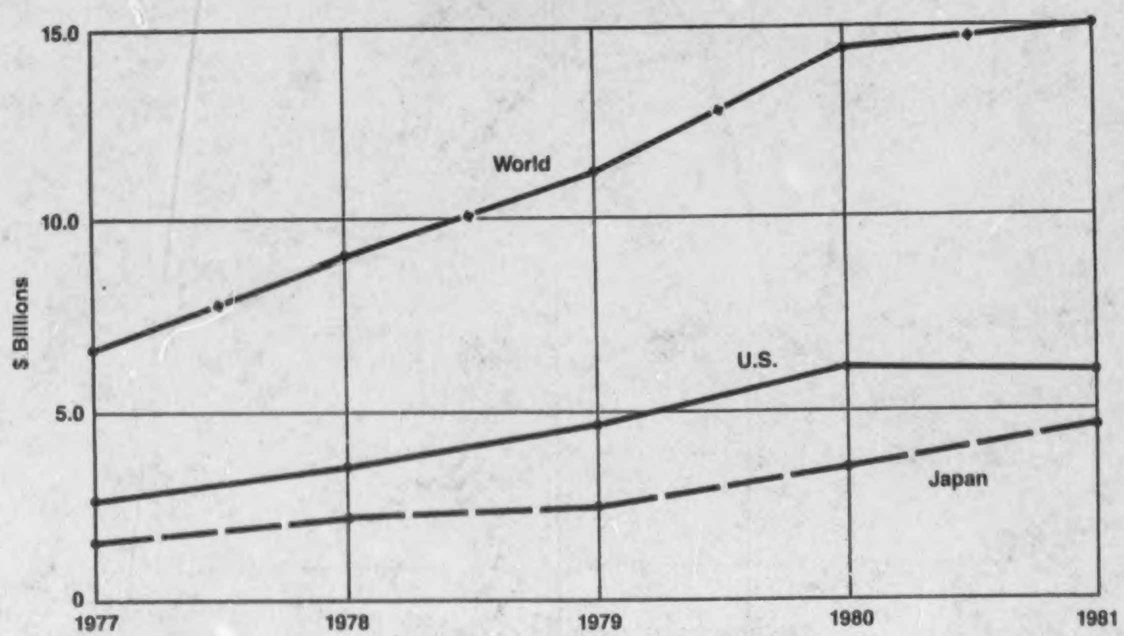


FIGURE 7

TOTAL SEMICONDUCTOR MARKET CONSUMPTION



Source: MITI, SIA & Nomura Research

April 1982

042COR-1104

FIGURE 8

Average Prices and World Industry Quarterly Shipments 1976-1981 for 4K, 16K and 64K Dynamic RAMs

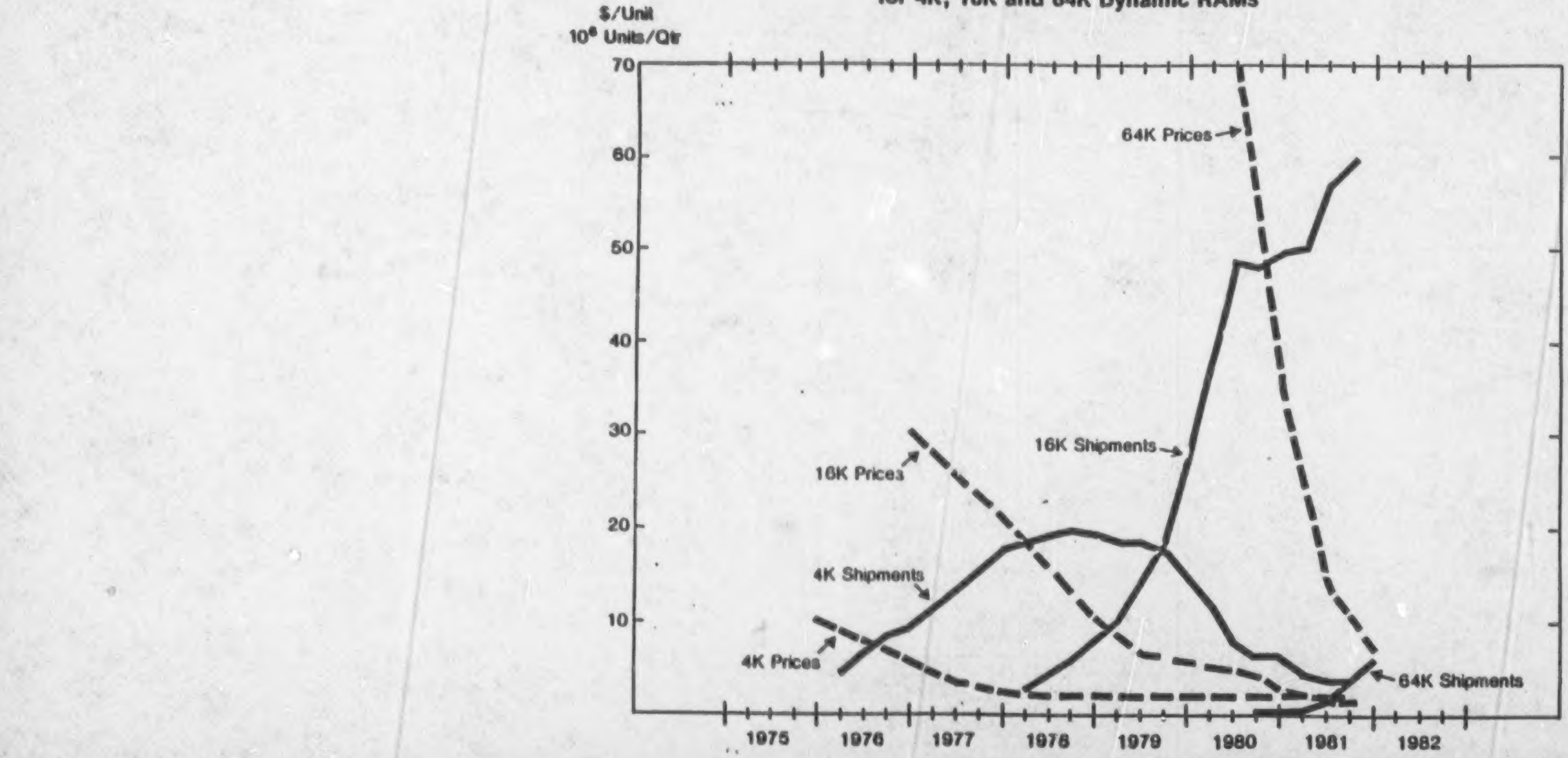
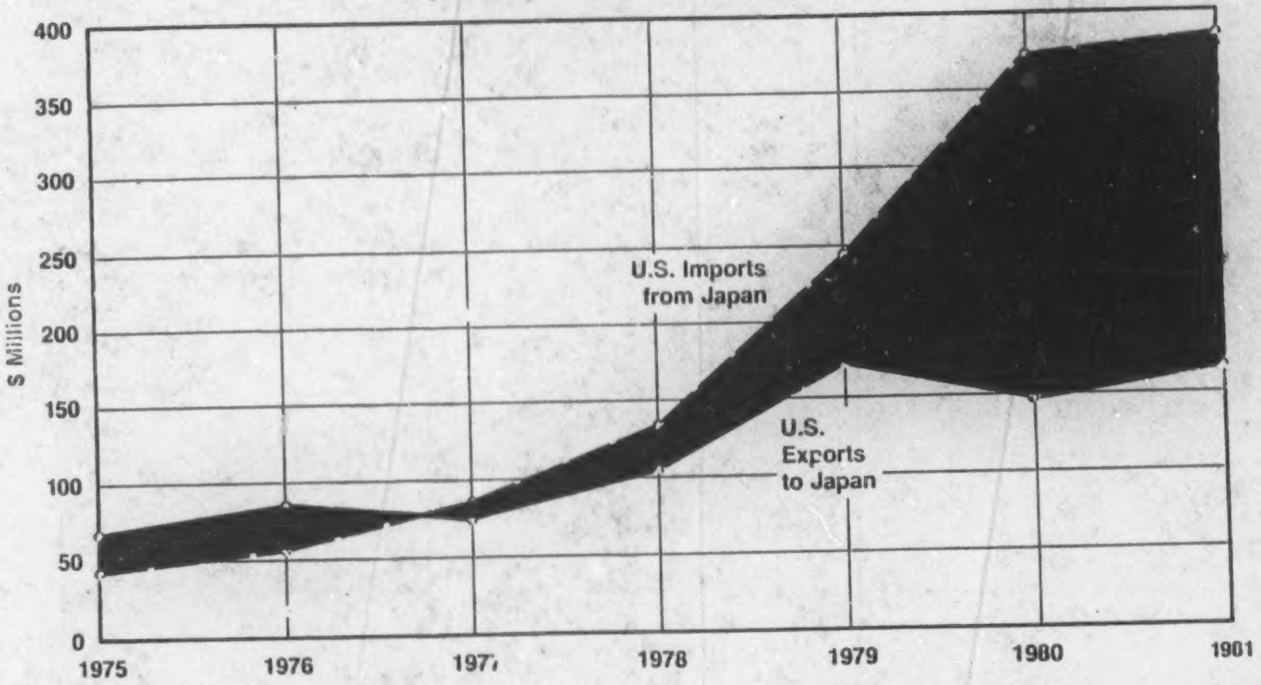


CHART A

U.S./JAPAN TRADE BALANCE
(Total Semiconductors)



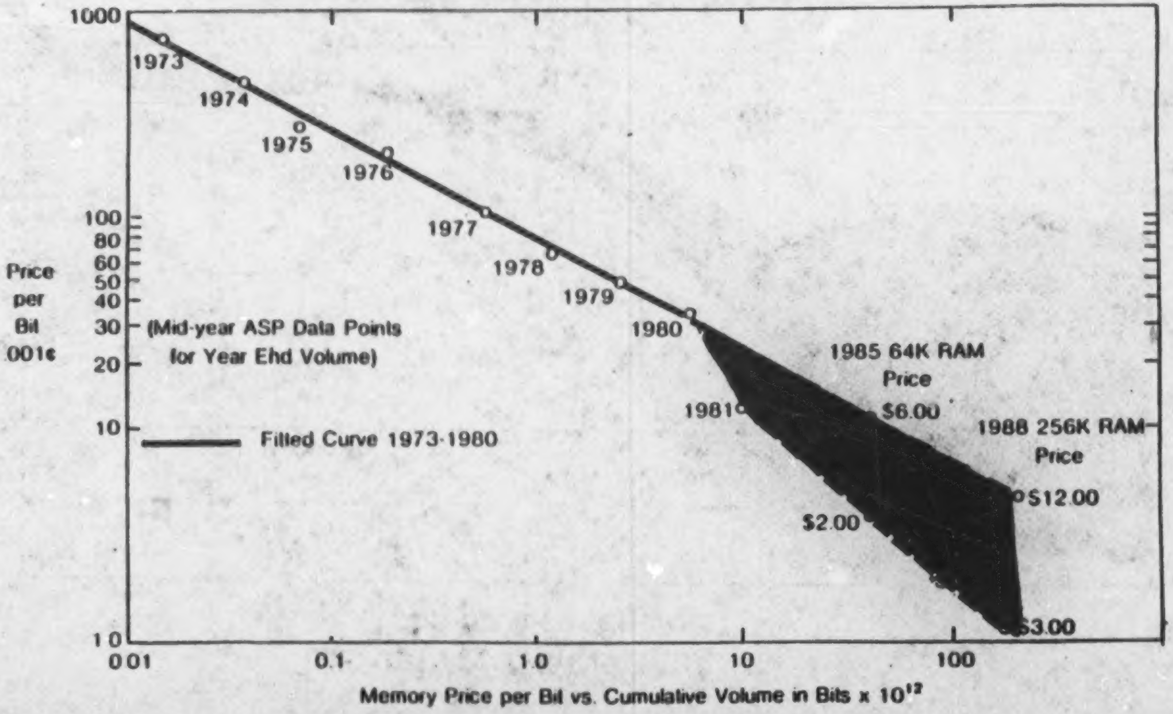
Data: U.S. Dept. of Commerce

March 1982

CHART B

Learning Curves,
Price per Bit vs. Cumulative Volume in Bits

Mos Dynamic RAMs



Senator HEINZ. Thank you very much, Mr. Sanders. I understand both you and Mr. de Castro testified, but I was not here for Mr. de Castro's testimony.

Senator Danforth and I both have some questions. They are of somewhat mixed parentage.

How do the barriers faced by high technology firms abroad differ from barriers faced in other industries?

Mr. DE CASTRO. I think, first, with respect to barriers to direct investment, high technology products generally are products which cannot be simply conveyed to the final user. It is necessary to assist the user in the application of that product to its ultimate use and also to be available to him to maintain that product, to upgrade it, to modernize it as time goes on.

The users of such products generally are unwilling to purchase products when the source of that support is in a different country thousands of miles away. They look for people to provide that kind of support close by its ultimate use.

Being barred in a number of countries from setting up any sort of business entity with which we can provide such services effectively closes the market for those products.

Senator HEINZ. I wasn't here for this part of your testimony, having been called to the floor for a vote, but I understand that one of your statements indicated that you didn't mind having high technology tariffs cut. Is that correct?

Mr. SANDERS. Well, the U.S. semiconductor industry is in favor of no tariffs. We have already lobbied hard and were successful in getting a reduction in tariffs to 4.9 percent. We favor no tariffs. Tariffs are not an issue.

Senator HEINZ. And you want tariffs cut simply because you favor free trade?

Mr. SANDERS. We favor free trade. All we ask is a chance to sell in their markets.

Senator HEINZ. Now, one of the issues that I'm sure we'll be confronting is the definition of high technology. Do all high tech industries want their tariffs cut?

Mr. DE CASTRO. I think, in my experience, by and large, most of the high tech industries—and I'm sure for every rule you can find an exception—favor free and open trade.

Senator HEINZ. Is that true for semiconductors?

Mr. SANDERS. Well, for semiconductors, we are absolutely in favor of reduction of tariffs to zero on a worldwide basis, on a multilateral basis.

Senator HEINZ. What about computers?

Mr. SANDERS. I can't speak for computers, but I would guess that that is something which should come out with consultation with the industry, and it will be developed through the hearing process.

Mr. DE CASTRO. I don't believe you would find any disagreement from the computer industry on that.

Senator HEINZ. Telecommunications?

Mr. SANDERS. I think there are already well-established programs on telecommunications. I think that, from the U.S. side, we favor——

Mr. DE CASTRO. Telecommunications has a special problem in that our network is open for people to come in. You can buy a telephone made anywhere in the world and plug it in. You can't do that in most other countries, so that is a special problem.

Mr. **Sanders**. I think that emphasizes the "fair" aspect of free and fair trade.

Senator **Heinz**. Now, if I understand it, you would both like to see responsible reciprocity legislation enacted this year. Is that correct?

Mr. **de Castro**. Yes, sir, particularly focused on investments.

Mr. **Sanders**. Absolutely.

Senator **Heinz**. Do you support the bill that I and other Senators have introduced, S. 2356?

Mr. **de Castro**. Yes, sir, by and large; primarily inasmuch as it supports the GATT process as it is currently ongoing.

It seems to me that we have two types of merchandise trade problems. First off, the GATT signatories, wherein it seems to me we have a fair basis for negotiation, and we should not upset that applecart.

On the other hand, we have a number of countries that are not subscribers to the full GATT treaty, and in that case we have a little bit more difficult problem.

Mr. **Sanders**. We favor it. We would like to see a negotiating mandate for a priority being set on high technology industries. That's the future.

Senator **Heinz**. Let me ask this: How do we in the United States stand vis-a-vis world competition in terms of product quality? Mr. de Castro?

Mr. **de Castro**. I think that the Japanese, perhaps in the last 3 or 4 years, have led us in product quality. There has been an enormous effort within the U.S. electronic industry to improve product quality, and I believe that today we have rough parity with the Japanese in terms of product quality.

Mr. **Sanders**. I certainly agree that we have parity. I think the quality issue has been diffused. I have a quote here from the general manager of Hewlitt Packard, one of the largest producers of computer systems in the world, who recently also has gained the reputation for being the spokesman for our industry quality. Richard W. Anderson, the general manager, said on February 14, and I quote, "As far as I am concerned, American firms have closed the gap on quality with the Japanese. U.S. firms have diffused the issue."

Senator **Heinz**. What will happen if we don't get the legislation that you say we need this year?

Mr. **Sanders**. Well, I'd like to comment on that, Ed, if I may.

Senator **Heinz**. Mr. Sanders.

Mr. **Sanders**. On the 64 K-RAM, which is becoming a household word even though people don't understand what a "bit" is, the bottom line is the aggressive pricing based on subsidized research and a protected home market is going to result in a deviation from that learning curve of $4 a unit. That $4 unit comes out in 1985 in $2.6 billion of lost revenues and profits that would have been reinvested in research and development and growth of our industry. That $2.6 billion in a single year means 100,000 high tech jobs.

Since the social change that is coming is inevitable—we have gone from an agrarian society to an industrial society; we are heading for an informational society—we have to create jobs in this country for the information society. We can't find jobs for all the farmers who had to go to the city to work for manufacturing. We couldn't find jobs on the farms for them. We won't be able to find jobs for those 10 million people that are out of work if we are not a world leader in the information technologies. Our trading partners know that. They have an industrial policy to beggar us. We must act now.

Senator HEINZ. Mr. Sanders, thank you.

Senator Bradley?

Senator BRADLEY. Thank you, Mr. Chairman.

Mr. Chairman, I would ask unanimous consent that I might be able to submit some questions in writing to Mr. Spencer and get his responses for the record.

Senator HEINZ. Without objection, so ordered.

[The questions follow:]

RESPONSES TO QUESTIONS ADDRESSED TO MR. EDSON W. SPENCER BY SENATOR BILL BRADLEY

Question one. If the President enforces U.S. trade rights by vigorously using section 301 of the 1974 Trade Act, do you think the causes of action under that section provide an effective basis for the President to try to redress, or retaliate against, foreign acts denying us fair market access. Do we need a new and unilateral cause of action?

I believe that section 301 of the 1974 Trade Act could be strengthened to better provide an effective basis for Presidential action when foreign acts or policies impair U.S. benefits under a trade agreement or unjustifiably, unreasonably, or discriminatorily burden U.S. commerce. In particular, this could be accomplished by extending the coverage of section 301 to include foreign direct investment, as the section now currently covers only trade in goods and services. International rules are sparse in the area of foreign direct investment. The leverage of the President to negotiate investment rules with our trading partners would be increased substantially were section 301 expanded.

With the extension of section 301 to cover foreign direct investment, I believe the President would have an effective basis for responding to foreign acts denying U.S. firms fair market access. Accordingly, ECAT does not see the need for a new unilateral cause of action under section 301 to respond to market access problems.

Question two. In your view, in general should the causes of action in U.S. law be based on foreign denial or impairment of U.S. rights under international trade agreements and norms?

In those areas in which there are international rules of agreements, causes of action should be based on denial or impairment of U.S. rights under those rules or agreements. This is consistent with the desire of ECAT members to see the expansion of the rule of law to international trade in services and to foreign direct investment.

Unfortunately, there are a number of areas in which international rules are lacking. In those areas, ECAT believes that the denial of market access should be a factor taken into account under section 301 in determining whether any act, policy, or practice of a foreign country is unreasonable or discriminatory. Denial of market access in itself should not be the basis of a sole cause of action under section 301.

Question three. Is there a danger in retaliating against foreign countries because they don't do things the way we do? Is there a danger in setting a precedent of asserting U.S. trade rights which are not recognized by, or do not derive from, international agreements or standards?

There is an inherent danger in insisting that our trading partners do all things the same way we do them, including an insistence that U.S. interpretations of international agreements or standards be the governing ones. Certainly, the U.S. government should enforce its rights, but this does not extend to unilaterally imposing the trade regime followed by the United States on foreign countries. A significant danger with such a course of action is that it would serve to encourage other governments to act in a like fashion.

Question four. Could retaliation by the U.S. on the basis of unilateral standards jeopardize U.S. international business interests? How?

Yes, U.S. international business interests could be jeopardized by a requirement of unilateral imposition of U.S. standards that do not accord with internationally agreed standards in an international trade dispute between the United States and other countries. There is every reason to expect that foreign firms would force their governments to take counter actions against U.S. firms, that is to counter-retaliate. The counter-retaliation could seriously disadvantage the trade and investment interests of U.S. firms which are involved in the initial trade dispute as well as those which are not. In short, the vulnerability of U.S. firms should not be overlooked. Restrictions beget restrictions. This easily could escalate into a full international trade war.

Question five. Would the weakening of the "rule of law" under GATT and the multilateral trade regime generally damage broader U.S. business interests?

Very definitely—all of us in the United States have benefited greatly from the multilateral trade regime put into place under U.S. leadership in the post World War II era. This is often too easily overlooked by those who are disappointed with the limited coverage of the system and the frequent breaching of its rule. The system is clearly inadequate in many areas, but its weakening would put us as a nation in an even worse position economically and politically. Business thrives under the certainty afforded by a rule of law.

Question six. Historically, has a rule of law based on open borders and widely recognized trade and other commercial rights served U.S. commercial interests?

Again, my answer is yes. For example, job creation in the United States and the rise of many U.S. firms to positions of economic preeminence have been furthered by the reduction of tariff barriers around the globe. Serving global markets allows for greater economic efficiencies. Without access to foreign markets, the United States would be a far poorer place. Unfortunately, in all too many instances, nontariff barriers have been imposed to provide protection for those subjected to greater international competition as tariff levels have been lowered. This is, however, a reason for us to redouble our efforts to expand the rule of law under the GATT and the multilateral trade regime.

Question seven. Should the U.S. place priority on strengthening and extending this rule of law, rather than weakening it by asserting a right to go it alone?

Yes, particularly in the area of international trade in services and foreign direct investment. ECAT would like to see a joint commitment by the United States and its major trading partners at the GATT ministerial meeting scheduled for this coming November, to work for a strengthening of the rule of law in these two areas.

Question eight. Do you agree that U.S. economic policies, including our macroeconomic policies, such as monetary, tax and exchange rate policies, importantly affect the ability of U.S. companies to penetrate foreign markets?

U.S. monetary and tax policies certainly affect the competitiveness of U.S. companies. Without, for example, the foreign tax credit and so-called foreign tax "deferral", U.S. companies would find it terribly difficult to survive in the world markets. Also helpful to U.S. export competitiveness is the DISC which was established to offset the disadvantages to the export activities of U.S. firms inherent in the U.S. tax system.

Exchange rates have a major impact on the ability of U.S. firms to sell abroad. The recent rise in the value of the dollar vis-a-vis foreign currencies not only puts U.S. exports at a serious disadvantage, but affects the whole U.S. economy, including the level of domestic interest rates.

Question nine. Do you agree that market conditions, such as interest rates, the availability of capital, skilled manpower and R&D opportunities, affect the ability of U.S. companies to penetrate foreign markets?

Yes, market conditions powerfully affect the ability of U.S. companies to penetrate foreign markets. Let's take the example of interest rate charges on financial packages associated with export transactions. It is almost impossible for a U.S. firm to compete for a sale in a foreign market with a competitive foreign firm if the foreign firm can offer a financing package with an interest rate substantially below what the U.S. firm can offer. Unfortunately, that is the situation in which U.S. companies are finding themselves because of the increasing use of interest rate subsidies by foreign governments. With the U.S. Export-Import Bank frequently unable to offer competitive financing to U.S. firms, foreign firms are winning sales—and with them, large parts of foreign markets—away from their U.S. competitors.

Historic U.S. competitive advantages in the cost and availability of capital are being seriously eroded by current economic conditions. While our pool of skilled manpower still offers a great competitive advantage, its skills increasingly are being emulated abroad. Antitrust statutes are inhibiting our R&D potential, which, relative to some of our trading partners, appears to be diminishing.

Question ten. Are these factors at least as important to U.S. trade performance as existing foreign barriers?

Without a healthy domestic economy, there would be little U.S. foreign trade. I would say, therefore, that market factors are the predominant ones. This is the reason why ECAT members are working, for example, to have section 861 regulations of the Internal Revenue Code modified to insure that research and development activities which otherwise might move abroad, remain at home. R&D activities are of great importance to the performance of U.S. firms. ECAT was particularly pleased that the Congress legislated a temporary suspension of the section 861 regulations in the Economic Recovery Tax Act of 1981. We would like to work with members of the Committee to see those changes made permanent.

Question eleven. Does it better serve our growth efforts over the long term to rectify these "domestic" barriers to U.S. exports than to retaliate against foreign barriers by raising the level of import protection?

Job creation and the continued growth of U.S. firms demand action on both fronts. I see them as complementary over the long term. U.S. trade performance will benefit from a positive domestic environment—economic and non-economic—as well as the lowering and elimination of foreign trade barriers.

Question twelve. Do you think it might help U.S. industries and improve government policies, if we had an analysis of the key factors which shape the worldwide competitive structure of those industries in which U.S. industries have high growth potential?

An effort by the Department of Commerce and other executive-level agencies to evaluate the worldwide competitive structure of industries important to the U.S. economy could be helpful. Such studies as might be undertaken should focus on U.S. industries which have high growth potential as well as those industries which are considered mature but employ many millions of Americans. Information which would be gathered should assist the development of long-range planning by the private sector.

Question thirteen. In your view, should it be the objective of U.S. trade law to alter the culture, philosophies and norms of our trading partners in order to conform them to U.S. norms?

Or, in general, should U.S. retaliation be aimed at trade restraining actions by governments, or in which governments participate?

Alterations of the culture, philosophies, and norms of other countries seems an inappropriate objective of U.S. trade policy. That policy historically has been one of seeking the reciprocal lowering of international barriers to trade through multilateral trade negotiations. In my view, that should continue to be the objective, and our trade policies should be designed accordingly. There have been and there will continue to be, however, instances where the enforcement of U.S. trade rights will lead to singling out one or more nations for trade retaliation.

Question fourteen. I believe we would all like to have the Administration do a thorough study of foreign barriers. I hope you agree that they should do a thorough study of U.S. industrial competitiveness. However, in your view, would it be helpful in all cases to force the Administration to take a position on actions we can take based on such studies? Is it possible that in some instances, taking a position that we could or could not retaliate under section 301 before beginning a formal section 301 investigation could produce a suboptimal outcome for U.S. business, e.g. we might weaken our negotiating strength by "showing our hand" with an Administration conclusion based on the study, or by constraining our negotiating options in advance?

ECAT supports a compilation of an inventory of foreign barriers to U.S. trade, services, and investment, together with a program of action by the Executive to alleviate or eliminate trade barriers. Furthermore, I might also note that we believe a listing of similar U.S. barriers should also be undertaken.

We are opposed, however, to a limiting of the negotiating flexibility of the Executive through the enactment of a requirement that the Executive must publicly announce for each foreign trade barrier identified what is to be its negotiating position and general course of action to achieve its elimination. As you rightly say, such action may simply serve to prematurely "show our hand."

We are further opposed to a procedure that would require the Congress to consider legislative solutions to trade problems that were not handled satisfactorily through either multilateral or bilateral negotiations conducted by the Executive.

Let me also note that ECAT hopes that any legislation which may be enacted would be balanced in that it would provide opportunities to all sectors of the economy to request the assistance of the U.S. government to negotiate the reduction and elimination of tariff and non-tariff barriers.

Senator **Bradley**. I would like to ask each of you a series of questions and have your responses to each of them.

Do you agree that U.S. economic policies particularly macroeconomic policies such as monetary and tax policies, importantly affect the abilities of U.S. companies to penetrate foreign markets?

Mr. **Sanders**. Certainly to the extent that we have higher capital costs than they do.

Senator **Bradley**. That is all, in your opinion?

Mr. **de Castro**. I think it's pretty clear right now that the extraordinarily high interest rates in the United States have put certain perturbations in the foreign exchange rates and have made our products substantially more expensive in foreign markets than they might otherwise be.

Mr. **Sanders**. Well, those are two negatives—he gave one and I gave one. There is a positive. The R. & D. tax credit that was passed last year was very beneficial to our industry and will be in the future because we can get more R. & D. done on an after-tax basis, so our cash goes a little farther. That's very positive.

Senator **Bradley**. Do you think that market conditions, including interest rates, as well as such things the availability of skilled manpower, R. & D. opportunities, the availability of capital, affect the ability of U.S. companies to penetrate foreign markets?

Mr. **Sanders**. It definitely does. We are trying to find ways to go from the old ways of parochial R. & D. where everyone jealously guarded everything as prime to cooperative research within U.S. laws. The Semiconductor Industry Association is sponsoring a research cooperative to get more bang for our R. & D. dollar. The other thing that we are doing is never losing sight of the fact that it is the piano player that makes the music, not the piano; and we need to educate more engineers. We have to enhance that.

Senator **Bradley**. Do you think that these market factors are as important to U.S. trade performance as existing foreign barriers?

Mr. **de Castro**. I think that there are certainly factors that come and go, and the current economic situation is one. But the trade barrier question is one that has been with us for a long time and I think one that we need to address.

These chickens don't come home to roost quick. The problems in the automobile industry had their genesis 30 years ago when we tolerated unreasonable quotas and tariffs in foreign markets and didn't force foreign governments to allow automobile companies to invest. The same problems will come home to roost in the high technology industry a number of years from now if we don't assure ourselves access to those foreign markets.

Senator **Bradley**. But I take your testimony to mean you also feel that if you don't have the skilled manpower or if you haven't spent the money on research and development you won't be able to penetrate those markets over the long run.

Mr. **Sanders**. Clearly, that's true. The semiconductor industry is investing about 28 percent on research and development and capital, which is four times the U.S. industries' rate.

My company invested last year 16 percent in R. & D. and 20 percent on capital investment. So our industry is not underinvesting; we are spending everything we can, and we are profitable.

Senator **Bradley**. If macroeconomic or domestic market barriers, such as excessively high interest rates, a scarcity of skilled manpower, and insufficient R. & D. generally exist in the economy, do you think it is more important for us to remove these domestic barriers to U.S. competitiveness or to retaliate against foreign barriers?

Mr. **Sanders**. I don't like the concept of retaliating against foreign barriers—that sounds pugnacious. I would prefer to just have them remove their barriers.

Senator **Bradley**. What about the tradeoff there?

Mr. **Sanders**. I have said to my shareholders and to my board of directors: The single most important factor in the health and growth of the information industry and the seminal semiconductor industry is trade relations. I stand on that.

Mr. **de Castro**. I think it's pretty clear that we are not going to solve our foreign market problems without doing both. We have got to rid ourselves of the barriers, and we have got to handle some of the domestic questions.

Senator **Bradley**. That's the answer I wanted. Thank you. [Laughter.]

Let me ask you one final question. Do you think it would be helpful if we had an analysis of the factors that shape the worldwide competitive structures of those industries in which we are likely to have the greatest growth potential during the next decade and beyond?

Mr. **de Castro**. Yes, sir.

Senator **Bradley**. What might you think we should consider in such a study?

Mr. **de Castro**. I think that that study needs to look at precisely how it is other countries stop free and fair trade. There are an awful lot of ways to do it. It's not all straightforward. It's not all tariffs. It's not all quotas; it's not all investments. There are all kinds of other things.

From my experience, the degree of expertise within the U.S. trading community on those problems is fairly minimal relative to what we see in other countries.

Mr. **Sanders**. My view is that innovation still leads in the United States. Our industry is the leading producer of the microchips that are the hearts of every Japanese computer and point of sale system.

What the Japanese in particular have been doing and what the Europeans are trying to emulate is to take the basic U.S. idea, manufacture it in high volume irrespective of a return on capital, and drive us out of the market, not allowing us to recoup our research and development investment, thereby cutting off our future growth. So I think what we have to study is merely ways to make sure that we have a world market that is open to our innovation. We are the innovative leaders today, but we must be able to recover our costs of investment.

Senator **Bradley**. So you are suggesting that what we need to do is catalog the various barriers out there and then move domestically to build up our own pool of skilled manpower and research and development. Isn't there anything else? Do you think if we catalog all the barriers and build up our pool of research and development, will that guarantee us a big market share in the Pacific Basin during the 1990's? Aren't there other things that we have to consider too?

Mr. **de Castro**. As I've said, we've got to see that those barriers are removed. But I am not sure that we yet know what they all are. They are very insidious.

Mr. **Sanders**. Our system of free enterprise was working just fine until we had a new competitor who didn't have an economic motivation. It's just the decision of where we want to spend our national treasure. I think we want to spend it on high technology so we can improve the quality of life, or we can wind up as a nation of farmers and hairdressers. [Laughter.]

Senator **Bradley**. Mr. Chairman, on that note——

[Laughter.]

Senator **Danforth**. There aren't going to be any more farmers. It's lawyers in there, too. [Laughter.]

Senator Chafee.

Senator **Chafee**. Thank you, Mr. Chairman.

I think that last comment was a very penetrating one. There always seem to be an abundance of funeral directors around, too. [Laughter.]

Mr. Chairman, I'm sorry that I've not been able to be here for these hearings. I did look over the testimony of Mr. Spencer of the Honeywell Corp.

I have a question, Mr. Chairman, that I would submit to ECAT for them to answer, and I would just like to read the question out loud.

The statement submitted on behalf of the Emergency Committee for American Trade contains a number of proposals. My question to Mr. Spencer is whether in his view those proposals require legislation or whether they would be implemented administratively. So if there is anybody from ECAT here, please raise your hand.

[A show of hands.]

Senator **Chafee**. Well, if you could get that answer from Mr. Spencer, the question being whether his proposals require legislation, in his belief, or whether they could be implemented administratively, I would appreciate that.

And I have a statement here, Mr. Chairman, which I would like to submit for the record. And I don't have any questions of the witnesses.

Senator **Danforth**. I would like to ask a question of each of you.

It is often said:

> If only America were more competitive, we would be able to compete in foreign markets. The problem therefore is not barriers erected by other countries; the problem is that American business has simply fallen behind, and other countries are making better products at better prices; the trade thing really isn't the problem at all.

If that observation is correct, then it is my view that we should not pass this bill, that we should not attempt to cure by protectionism what we can't cure by our own innovativeness and know-how and productivity.

In your industry would you say that the problem is that the United States just can't keep up and other countries are more inventive, more highly productive and skilled than we are, and that it isn't really the problem of trade barriers but it is a problem of the sluggishness and lack of creativity of American industry?

Mr. DE CASTRO. Well, since my business is primarily selling computers to people to help them improve their productivity, I certainly wouldn't want to say we've done all we can in this country, nor do I believe we have done all we can.

I don't believe that we are doing significantly worse than any other country, including Japan. I do believe that there are some differences between ourselves and Japan in the structure of the society, the capital markets and how they function; but in terms of the gut-level productivity of industry, or at least the high technology industry with which I'm familiar, I believe we are as good as or better than any other country.

Senator DANFORTH. So we have a fair opportunity to compete throughout the world in high technology?

Mr. SANDERS. We are the world leader. In microprocessors, as an example, which have been widely heralded even in the lay press, on the basis of the best technical solution a survey showed that 9 of the 10 top-rated companies were American. There was only one Japanese.

In my company's case, we provided the prototype chips for all of the basic central processors in the Japanese telecommunications system. My concern is will we be able to enjoy the volume business to recoup our investment? History says, "No chance." As soon as they can replicate those products my business will decline. So we provide the prototypes, we do the innovation, they emulate, they effectively make good manufacturing decisions. There is no question they are a very formidable competitor. But we have the innovation; we have the skill; we can compete on a world basis. All we need is a chance.

Senator DANFORTH. Why is this legislation important?

Mr. SANDERS. The legislation is important because I think it provides a framework for which the administration has a mandate that high technology is important to the future of this country. Currently there is no such mandate. It is, if you will, a flagship for an industrial policy that says America wants to move into the informational age and fuel its own growth.

Senator DANFORTH. Thank you very much.

Mr. SANDERS. Thank you.

Mr. DE CASTRO. Thank you.

STATEMENT OF HOWARD D. SAMUEL, PRESIDENT, INDUSTRIAL UNION DEPARTMENT, AFL-CIO

Mr. SAMUEL. Mr. Chairman, my name is Howard Samuel. I am president of the industrial union department of the AFL-CIO, but I appear here as cochairman of the Labor-Industry Coalition for International Trade, which we call LICIT.

LICIT is a coalition of 8 companies and 11 unions, covering a fairly wide spectrum of U.S. industries, who are joined together and have been for the last year and a half, committed to an open and fair trading system and fully aware, despite the diversity of the industries we represent, that international trade has become and is continuing to be a growing part of our economy, and we've got to be prepared to meet its demands.

I would like to first call on Claude E. Hobbs, who is vice president of the Westinghouse Electric Corp., to summarize the first part of our statement. I will then summarize the second part, and with your permission we will leave the statement to be introduced in the record in full.

Thank you.

STATEMENT OF CLAUDE E. HOBBS, VICE PRESIDENT OF WESTINGHOUSE ELECTRIC CORP.

Mr. **Hobbs**. Thank you, Mr. Chairman.

Mr. Chairman, we are here today to support you and other Members of Congress in working for the implementation of a trade policy that vigorously enforces U.S. rights in the international trading system.

LICIT, which is the acronym for our group, welcomes the domestic debate on trade reciprocity. Legislation which you and Senator Heinz have introduced, as well as a similar bill by Senator Robert Byrd, has made a major contribution to this debate.

The success of this debate and the legislative process will be judged by the results which are achieved in opening up markets to U.S. exports and in insuring that U.S. firms and workers compete in the world economy on a fair and equitable basis.

Our coalition issued a statement on international trade in October 1981 that advocated an open trade policy based on reciprocity among industrialized countries. In general terms we define reciprocity as open, fair competition for foreign products in the U.S. market and for American-made products in foreign markets. The emphasis in the LICIT statement was on vigorous enforcement of U.S. rights in the international trading system. It is implicit in the statement that the concept of reciprocity has more to do with a change of policy and the application of negotiating leverage than a major restructuring of U.S. trade laws.

The legislative proposals being considered by this subcommittee attempt to strengthen the hand of the executive in eliminating foreign trade barriers. The developing controversy concerning reciprocity is a healthy sign that the United States is coming to grips with the need to formulate a trade policy that is effective and relevant to the economic conditions facing the United States today.

The United States is more dependent than ever on an open international environment for international trade. However, the United States has less leverage than in the past in dealing with the barriers and other practices that can harm U.S. interests in international competition.

Traditionally, our leverage derived from the mutual benefits that we could offer for a reciprocal elimination of barriers, which were predominately reduction of tariffs.

The very success of the GATT in addressing the elimination of traditional tariff and nontariff barriers to trade has led to the emerging trade policy focused on industrial policies, structural barriers to trade, and the interaction of countries with fundamentally different economic systems. Indeed, in many instances, U.S. firms and workers are finding that the reciprocal benefits that they expected from mutual tariff reductions are being impaired by many kinds of trade-distorting measures and barriers that are widespread in many countries and almost nonexistent in the United States.

As we see it, the questions for U.S. trade policy which these hearings address are: How to adapt to this different environment, and, what tools are available for addressing the new types of barriers facing U.S. exports and achieving what the GATT system promises—reciprocal and mutually advantageous benefits from trade?

I think that's enough of a summary of a more lengthy statement that we would appreciate having put in the record, Senator.

[The prepared statement follows:]

STATEMENT

of

HOWARD D. SAMUEL, PRESIDENT
INDUSTRIAL UNION DEPARTMENT, AFL-CIO

and

CLAUDE E. HOBBS, VICE PRESIDENT, GOVERNMENT RELATIONS
WESTINGHOUSE ELECTRIC CORPORATION

on behalf of

THE LABOR-INDUSTRY COALITION FOR INTERNATIONAL TRADE

before the

SENATE FINANCE COMMITTEE
SUBCOMMITTEE ON INTERNATIONAL TRADE

Hearings on Trade Reciprocity

May 6, 1982

Mr. Chairman:

We are here today to support you and other members of Congress in working for the implementation of a trade policy that vigorously enforces U.S. rights in the international trading system. LICIT welcomes the domestic debate on trade reciprocity. The legislation which you and Senator Heinz have introduced (S. 2094 and S. 2071), as well as other legislation such as that introduced by Senator Robert Byrd (S. 2347), has made a major contribution to this debate. The success of this debate and legislative process will be judged by the results which are achieved in opening up markets to U.S. exports and in ensuring that U.S. firms and workers compete in the world economy on a fair and equitable basis.

Our coalition issued a Statement on International Trade in October, 1981 that advocated an open trade policy based on reciprocity among industrialized countries. While full reciprocity cannot be expected from developing countries, the newly industrializing countries must move toward full acceptance of not just the benefits, but also the obligations, of the international trading system. In general terms LICIT defined reciprocity as "open, fair competition for foreign products in the United States market and for American-made products in foreign markets." The emphasis in the LICIT statement was on vigorous enforcement of U.S. rights in the international trading system. It is implicit in the statement that the concept of reciprocity has more to do with a change of policy and the application of negotiating leverage than a major restructuring of U.S. trade laws.

The legislative proposals being considered by this subcommittee attempt to strengthen the hand of the Executive in eliminating foreign trade barriers. The developing controversy concerning reciprocity is a healthy sign that the United States is coming to grips with the need to formulate a trade policy that is effective and relevant to the economic conditions facing the United States today.

The International Environment is Forcing the United States to Reevaluate the Implementation of U.S. Trade Policy

The United States is more dependent than ever on an open international environment for international trade. In 1980, 13.7 percent of all employment in U.S. manufacturing industries was related to U.S. exports of manufactured products. This means one of every seven manufacturing jobs. (This compares to 10.2 percent only 3 years ago, or one of every ten manufacturing jobs.) During a time of relatively slow growth both domestically and internationally, the total share of U.S. employment related to manufactured exports increased from 3.6 percent in 1977 to 5.0 percent in 1980. Thus over 5 million American jobs now depend directly on exports.

However, the United States has less leverage than in the past in dealing with the barriers and other practices that can harm U.S. interests in international competition. Traditionally, our leverage derived from the mutual benefits that we could offer for a reciprocal elimination of barriers (e.g. reduction of tariffs). The very success of the GATT in addressing the elimination of traditional tariff and nontariff barriers to trade has led to the emerging trade policy focus on industrial policies, structural barriers to trade, and the interaction of countries with fundamentally different economic systems. Indeed, in many instances U.S. firms and workers are finding that the reciprocal benefits that were expected from mutual tariff reductions are being impaired by many kinds of trade distorting measures and barriers that are widespread in many countries and almost nonexistent in the United States. The very success of tariff reductions and the barring of the use of quotas and common nontariff barriers has in fact led to a proliferation of these trade distortions.

The questions for U.S. trade policy, which these hearings address, are how to adapt to this different environment and what tools are available for addressing the new types of barriers facing U.S. exports and achieving what the GATT system promises -- reciprocal and mutually advantageous benefits from trade.

What is Reciprocity?

Reciprocity under the GATT system has meant that the participants in a negotiation receive what each party believes are benefits sufficient to induce them to accord to others the concessions which they have granted. These concessions are normally then extended unconditionally to all GATT members, not just to those who have granted "reciprocal" concessions.

Moreover, when the U.S. agrees to a tariff concession, it is also agreeing not to take other actions which would nullify the benefit of that concession to our foreign trading partners. Similarly the concessions the United States has received from other countries should not be impaired by foreign government measures such as directed procurement, subsidies, anti-competitive business practices, export requirements, discriminatory regulations, etc. In cases where the benefits to the U.S. are being impaired, the United States should be diligent in enforcing our rights under international agreements. We hope the legislative process concerning reciprocity will result in such diligence.

To suggest that such a course of action need put us in violation of our GATT agreements fundamentally misses the point. The GATT contemplates just such a reciprocal balance of benefits as reflected in Article XXIII provisions. The United States can and should bring its complaints to the GATT. Where the GATT agrees that nullification or impairment has occurred, the GATT can be used as leverage to change the practice or the U.S. can be authorized to suspend equivalent concessions.

However the current debate on reciprocity encompasses a broader range of concerns than those embodied in the judgments made by negotiators about the "reciprocal and mutually advantageous benefits" of tariff reductions. These concerns have been expressed by such phrases as "substantially equivalent competitive opportunities," "substantially equivalent commercial opportunities," "reciprocal market access," or "national treatment." All of these formulations have been put forward as different ways to define reciprocity. Such formulations are necessary in making policy statements or drafting legislation. Yet the fundamental point is to correct the trade problems that have given rise to the call for reciprocity, not to come up with better ways to characterize the concept.

The issue, very simply, is to achieve equity in our economic relations with other countries. This is what LICIT meant in calling for "open, fair competition for foreign products in the United States market and for American made products in foreign markets." The problem is that in many sectors and in many countries U.S. companies and workers are not allowed to compete in a fair and open environment.

Is Reciprocity Legislation Necessary?

New legislation on reciprocity, and the legislative process it entails, is important primarily as a means of forming the political will and consensus to act. LICIT believes that current U.S. law provides those responsible for the administration and enforcement of U.S. trade law with the authority and means to take action against most foreign trade practices and barriers right now. Nevertheless, the addition and clarification of services and investment authorities to section 301 is a useful rounding out of existing authority.

Beyond providing the impetus for action, however, the legislation being considered by the Subcommittee moves U.S. trade policy in the right direction and provides the Administration with additional tools and negotiating authority to address new trade problems in the GATT and otherwise.

Enforcement of U.S. Rights in the International Trading System

The most significant step the United States could take right now to address the concerns raised in the reciprocity debate is to more diligently enforce existing U.S. trade law and our rights under the GATT. LICIT strongly supports the monitoring and reporting provisions provided in the legislation being considered by the Subcommittee. But we know enough now to take actions to enforce U.S. rights in the trading system. We would like to enumerate for you an illustrative list of examples where we believe a cause for action already exists.

Export Requirements

Export requirements for foreign investment are not explicitly prohibited by the GATT, although a strong case can and should be made that many types of export requirements, especially when associated with incentives, violate a number of GATT articles and underlying principles. A greater effort should be made to bring these practices under the discipline of the GATT. The Administration recently began GATT proceedings against Canada concerning such requirements on U.S. companies mandated by its Foreign Investment Review Agency. We support that action but believe that Canada should not stand accused alone if the spread of this kind of practice is to be halted. Other GATT signatories and countries outside of GATT also impose export commitments. Brazil and Mexico are notable examples.

The Brazilian government, according to the April 5 Journal of Commerce, recently approved 22 special export incentive agreements with 22 automotive and capital goods companies involving commitments to export $17 billion worth of products over the next three to seven years in exchange for fiscal incentives and import privileges. The agreements were signed with the Commission for Concession of Fiscal Benefits and Special Export Programs (BEFIEX) for export commitments between now and 1989. The article did not list all of the companies concerned but indicated that Ford and GM were among those with the largest commitments; $3 billion for Ford and $1.1 billion for GM.

What the government of Brazil is doing -- and what other countries like Mexico, Spain and Australia are also doing -- is transferring through government fiat the location of automotive and other production from countries like the United States to its own territory. As the Ford marketing director, in reference to their Brazilain operations, was quoted as saying: "It would be impossible to think of the Escort for just the local market. It would not be economically viable." Would Ford have chosen to locate the plants there but for direct intervention of the Brazilian Government? This is a situation where a GATT member, through import restrictions and export requirements and subsidies, is practicing the most blatant form of beggar-thy-neighbor trade policy.

A similar situation exists closer to home with a non-GATT member, Mexico, which we have discussed in previous testimony. We recognize that, unlike Canada, Mexico and Brazil are developing countries. However these newly industrializing countries are fully competitive in many industrial sectors and must accept the obligations, as well as the benefits, of the international trading system. It is the persistence of situations like that described in Brazil and Mexico that make U.S. firms and workers believe there is a lack of equity or reciprocity in our trading relations with other countries.

Implementation of MTN Codes

A major concern of LICIT is that the various codes negotiated in conjunction with the MTN are not being adequately enforced or even monitored, nor adequately complied with by the other parties to the codes. One example of this situation concerns the inclusion of Nippon Telephone and Telegraph (NTT) as a covered entity under the Government Procurement Code.

Extensive negotiations took place between the United States and Japan leading to Japan's accession to the Government Procurement Code. The major U.S. objective was to open up NTT purchases of telecommunications equipment to U.S. and other producers, given the fact that the United States is highly competitive in telecommunications equipment. In return, valuable U.S. markets were to be opened to Japan by waiving the provisions of the Buy America Act in accepting Japan under the Government Procurement Code. An agreement was reached between the United States and Japan. However a number of U.S. companies and Unions (including the Communications Workers of America, the International Brotherhood of Electrical Workers, and the International Union of Electrical Workers) took the position that the agreement should be evaluated over time in light of NTT purchases of high-technology telecommunications equipment from the United States.

The agreement with Japan has been in effect almost a year and one-half now, and during that time the Commerce Department reports that only $3.4 million in sales to Japan were made, and none of these were in the highest technology areas. This despite the fact that the U.S. telecommunicatons industry is the most technologically advanced in the world. Experience under this agreement requires an immediate Congressional inquiry into whether the terms of the agreement are being fully honored. In other words, has the bargained for reciprocity been obtained.

USTR should investigate and report to the Congress the reasons behind the lack of purchases by NTT of U.S. manufactured telecommunications equipment. The NTT agreement is up for renewal in January, 1984. Serious consideration should be given to denying any renewal of the agreement and to withdrawing the concessions extended to Japan under the Government Procurement Code if there is a failure to actually open up the Japanese market. This is a major trade policy issue for both the U.S. and Japan and should be given the serious attention it deserves.

Export Subsidies

Another area where we believe U.S. policy has not lived up to the promise of U.S. law concerns export subsidies -- both direct subsidies by developing countries and subsidized export credits by developed countries.

The GATT has failed to extend any meaningful discipline over developing countries with respect to direct export subsidies on industrial products. The GATT does not proscribe direct subsidization of exports by developing countries, no matter what their stage of industrial development. The earlier U.S. attempt to extend a progressive discipline over developing country export subsidies through the Subsidies Code appears to have failed. In the first instance this is the result of the failure to have included in the Subsidies Code a clear requirement under which developing countries would have agreed unequivocally to phase out their export subsidies on industrial products within a given time frame. Absent a specific prohibition, the U.S. has not succeeded in extracting specific commitments from developing countries when they accede to the subsidies code and thereby obtain the benefit of an injury test under U.S. countervailing duty law.

The U.S. accepted a commitment from India last Fall that amounts to no commitment at all. India agreed to "reduce or eliminate export subsidies whenever the use of such subsidies is inconsistent with its competitive or development needs." Such an agreement calls into question the commitments policy and raises serious implications for current negotiations with such countries as Mexico and past commitments already reached with countries like Brazil.

Of far more immediate concern are the official export credits offered by developed countries at subsidized rates -- another example of a lack of discipline over export subsidies. Subsidized export credits are more of an international trade problem today than they have ever been. The OECD estimated that in 1979 export credit subsidies by the industrial countries totaled $5.5 billion. The U.S. government has estimated that this subsidization on official credits outstanding increased to about $7.3 billion in 1980.

Despite the billions of dollars in manufactured exports and hundreds of thousands of jobs which are affected each year, there exists no adequate international discipline over this form of unfair competition.

The recently negotiated Code on Subsidies and Countervailing Measures prohibits subsidized export credits granted by industrialized countries. However an exception was made for countries which are party to the OECD Arrangement on Guidelines for Officially Supported Export Credits with respect to most products (the Arrangement does not, however, cover the export sale of commercial aircraft, nuclear power generating equipment or ships). This exception covers all the major OECD countries. The minimum interest rates in the Arrangement are so far below current market rates that a high degree of direct subsidization is not only possible, but necessary in order to offer competitive financing. Thus even though the GATT code signatories have agreed that subsidized export credits are to be proscribed, the exception created in the code and the failure of the OECD Arrangement to exert current discipline over such practices means that this type of unfair competition is increasing.

In a study on international competition utilizing official export credits, which LICIT will soon publish, we were able to verify that in 1981 at least $1.5 billion of U.S. export sales were lost because of subsidized export credits by foreign governments. This is only a small portion of total lost sales. One of the examples indenified was the loss by Westinghouse Electric Corporation of an $80 million sale of turbine generators to Korea. The business went to a French company -- Alsthrom Atlantique -- even though Westinghouse was price competitive and was given a preliminary loan commitment by Eximbank for a significant portion of the sale. The sale was lost because of the subsidized financing provided by the French government. The loss of the sale also meant the loss of 2,500 man-years of U.S. employment.

Thus, with respect to both developed and developing countries, the subsidies code has proven to be very inadequate. Yet the United States has not adequately used the leverage it has -- maintaining a financially competitive Eximbank and enforcing a commitments code policy -- to try to make the subsidies code work as we had hoped that it would.

Foreign Industrial Policies

We have enumerated above a number of examples that illustrate a broad range of trade issues that should be dealt with under U.S. trade law right now to address what many Americans see as a lack of reciprocity or fairness in our international trade relations. Beyond these concerns there exist a whole range of issues raised by the industrial policies of other governments that our country has not yet begun to address. Again, to make the policy discussion concrete, we will provide two examples.

In 1975 the United States' share of all aircraft exports from OECD countries was 70 perent. By 1980, the latest year for which comparable data is available, the U.S. share had fallen to 53 percent. This reduction in market share was not the result of the "invisible hand" of the market, but rather the very visible hand of foreign governments. This 25 percent reduction in market share in just five years was primarily due to the market gains of Airbus Industrie, a consortium of predominately government-owned or controlled enterprises consisting of companies from France, Germany, the United Kingdom, and Spain as full partners, and Belgium and the Netherlands as associates. Government-furnished support is provided to the companies in the consortium through a variety of means not available to U.S. companies.

In the case of steel, the import share of our market has been averaging almost 25 percent in the past 6 months. Is all of this steel produced more efficiently than our own steel, and competitive in our market despite shipping costs? Clearly, the answer is no. Government subsidies and other measures have slowed a natural retrenchment of aging industries abroad, while many newer suppliers gain access to our market through subsidization and dumping.

In the newest and exciting field of microelectronics, we see markets closed or closing abroad (will Thomson, the French electronics firm, newly nationalized, now make purchases solely on commercial grounds), and the use of highly successful, aggressive government-organized and supplied export strategies resulting in rapid gains in market share here.

What is important to understand is the connection between industrial policies and international trade. Industrial policies are made by national governments. Yet most of the industrial sectors they affect, like aircraft, steel, electronics and electrical equipment, are international in nature. National political decisions taken by some governments to promote and foster certain of their domestic industries affect the domestic industries of other trading partners and competitors. The decision of Lockheed to phase-out production of the L-1011 aircraft, of U.S. electronics firms not to enter into production of the next generations of high density memory chips, and similar decisions of many American firms to abandon important areas of production, are due to decisions made in foreign capitals, with little or no attention given to these questions in our own government's policy deliberations.

Industries affected by such policies include not only aircraft and integrated circuits, but steel, computers, power generating equipment, telecommunications systems, machine-tools, and other technically sophisticated capital goods.

To give another example of the effect of foreign government industrial policies on the U.S. economy let us look at Japan; a country that has probably made the most extensive and effective use of industrial policy measures among the major industrial countries.

The Wall Street Journal reported this past Monday, May 3, a story about a U.S. machine-tool company that has produced a detailed account of how the Japanese government turned its domestic machine-tool industry into a cartel as a means to penetrate the U.S. and other export markets. The cartel was created, according to Houdaille Industries Inc.'s study, through a series of laws, cabinet orders, ministry ordinances and official "guidelines." Japanese machine-tool makers were exempted from antimonopoly laws, and were authorized to pool their resources, set prices, and share in a host of subsidies and tax benefits.

Houdaille's contention, contained in an unfair trade practices petition filed with USTR, is that the creation of a machine-tool cartel has been the major factor behind Japan's penetration of the U.S. market in recent years. The article reported that in 1976 Japanese manufacturers supplied 3.7 percent of the U.S. market for numerically controlled machinery centers. By 1982, the Japanese manufacturers supplied 50.1 percent of the U.S. market. The corollary result was that U.S. companies share of the domestic market fell to 48.7 percent in 1981 compared to 95.1 percent in 1976.

Serious questions are raised by both these examples. How can the current GATT-based trading system endure in the face of such government directed industrial policies? What constitutes reciprocity, or fair and open competition in these circumstances? In the case of Japan and Europe, such policies are not new. Japan in earlier years also targeted steel, consumer electronics and automobiles to be major export industries, obviously with a high degree of success. Now the Japanese government has directed its attention to semiconductors, computers and commercial jet aircraft. Europe's policies run the spectrum from support of aging industries, to an attempt to use government controls to alter trade and investment patterns in new areas, such as "telematics".

What is perhaps most surprising is the continued lack of appreciation in the United States of the current and long-term effect of the industrial policies and export support practices of Europe and Japan on the U.S. economy and on U.S. international competitiveness. There is little evidence that a blind reliance on market forces alone -- and the willingness to unwittingly accept the consequences of the industrial policies of other governments -- is an adequate basis for the conduct of international economic policy today. For even if the United States were to pursue a consistent laissez faire course, we would find ourselves faced with the continued pursuit of industrial policy and export promotion measures in other countries which would produce what would be regarded as unfair competition and trade distortion, requiring retaliation or justifying protection. The Houdaille unfair trade practices case filed this week is just such an example.

The Exchange-Rate Issue

One final point needs to be mentioned with respect to Japan that illustrates another blind spot in U.S. trade policy formation. This is the current severe undervaluation of the yen with respect to the dollar. Most economists we've spoken with indicate that the yen is currently undervalued by at least 25 percent to 30 percent in relation to the dollar. This undervaluation of the yen provides Japanese exporters in all industries with an almost insurmountable competitive edge. Not only are Japanese exports made more competitive in the U.S. market, but U.S. exports are likewise made artificially more expensive, and less competitive in the Japanese market. Both the Japanese and United States governments are aware of this problem and the way it is exacerbating current trade tensions between the two countries. Yet neither government has taken any significant action to address this problem which is of extraordinary importance to both countries.

The yen-dollar imbalance is primarily a function of the sharp divergence in the direction of fiscal and monetary policies between the United States and Japan, and the resulting very high interest-rate differential between the dollar and the yen. The problem, though, is also related to the closed nature of Japanese financial markets and limited access for foreign direct investment in Japan. U.S. trade policy should begin to take into account the effects of exchange rates on U.S. trade competitiveness and to explore measures that could be taken to maintain a more appropriate exchange rate between the dollar and other major currencies, particularly the yen.

New Directions for U.S. Trade Policy

We have emphasized, as an illustrative list, a number of trade policy problems that could be addressed under current U.S. law to achieve reciprocity or more equity in U.S. trade relations. The point being made was that a part of the so-called trade reciprocity problem has been the result of less than adequate enforcement of U.S. trade rights under current law and international agreements. This is not a problem unique to this Administration. But any reciprocity legislation should not be seen as a substitute for the diligent administration of already existing U.S. trade law.

LICIT endorses the major objective of the legislation being considered by this subcommittee, which is to bring about a more vigorous enforcement of U.S. rights and current U.S. law. This does not mean that all flexibility can be denied the executive. It might be counterproductive to publish the President's policy options with respect to a foreign practice. But certainly the U.S. Trade Representative can consult with this Committee, the Ways and Means Committee and private sector advisors on what can and will be done.

LICIT also strongly supports the provisions in the legislation that are designed to identify areas where the U.S. is not receiving reciprocal market access and where there is significant export potential. We would urge, however, that the monitoring and reporting activities be performed in a broader context.

The United States needs to develop a better framework for the setting of our trade policy priorities. On the one hand we need to indentify those sectors of our economy with high export potential and exercise our international rights and other means at the President's disposal to secure open and fair market access for the products of those sectors. On the other hand we need to not only react to trade restrictions of other countries, but to anticipate potential problems the United States will face through lost markets at home and abroad as a result of the industrial policy objectives of other countries. When the Mexican government announces a new decree for the development of a computer industry; when the Japanese government targets aircraft and semiconductors as the next sectors to lead their export drives; or when the European governments nationalize important sectors in their economies, the United States should be in a position to assess the potential effect of those measures on its economic interests. An initial analysis of foreign industrial policies could be carried out by the International Trade Commisssion by means of a section 332 investigation or by a special office in the Commerce Department or USTR. What is important is that our trade policy should begin to look forward and not just react.

LICIT also supports the renegotiating leverage provided by the Section 301 changes which the Administration has indicated it would welcome concerning investment and services issues.

Because we believe that the United States must pursue its rights in the GATT more aggressively, we believe section 301 could also be strengthened as a negotiating mechanism by making several procedural changes directed at improving the effectiveness and efficiency of investigations of unfair trade and investment practices. These changes would be:

1. Provide that recommendations of the USTR on petitions under section 304 of that Act shall become effective unless rejected by the President within 21 days. Current law requires the President to accept or reject a recommendation within 21 days. This change makes any 301 decision associated more closely with the USTR and not the President. Therefore, it is more likely that 301 decisions will be based more on national commercial interests.

2. Require preliminary determinations by the USTR within 90 days of the initiation of an investigation. This change mirrors other investigative procedures under U.S. trade law, and would focus investigations and promote negotiated settlements.

3. Amend section 306 of the Trade Act of 1974 to require the USTR to appoint private experts when special expertise is considered necessary, and to appoint surrogates to represent foreign governments which fail to appear or be represented in these investigations. These changes are intended to reduce the difficulty of fact-finding in such cases.

Mr. Chairman. There are major challenges that we need to face. Many have reacted to your legislative proposals and those of others as calling for a trade war; for an eye for an eye; a tooth for a tooth; an onset of retaliation. These commentators have set up an artificial choice between Armageddon and total inaction. We cannot, however, avoid trade conflicts by a policy of self-imposed ignorance. If we do not consult about foreign commercial and industrial policies when they are being formulated and implemented, we will instead deal with their injurious results in trade cases five or ten years later -- such as the hundreds of steel cases filed in the last year. This is a poor way to run a country. The legislation that this committee reports can, in a reasoned and balanced way, put us on a path to long term harmonious relations with our trading partners on a basis of equity and mutual benefit.

Mr. Chairman, that concludes our prepared remarks. We will be pleased to answer any questions that you or other members of the Subcommittee may have.

Mr. **Samuel**. Let me mention, if I could, Senator, just in summary, some of the other specific examples where we believe our trading system has in effect broken down and which would be addressed by the kind of legislation which has been submitted.

No. 1, we mentioned "export requirements" which I think have received a good deal of attention in the last year or so. Although they are not explicitly prohibited by GATT, nevertheless they have a considerable effect on our trading patterns, which surely go well beyond what was intented and envisioned by the GATT agreement. Among the examples of this are the recent agreements signed by Brazil, with some 22 companies in the auto and machine areas, which would involve exports of something like 17 billion dollars' worth of products over the next 3 to 7 years, exports which probably would not have taken place except for the terms of these agreements and requirements.

The same thing has been happening in Mexico, which will involve huge exports of automobile engines, for example, many of them to this country, and is happening also in Canada, in Spain and Australia, and other of our trading partners as well.

Second, the implementation of the MTN Codes, which all of us were involved in designing a few years ago and this body was involved in passing 3 years ago. As you know, Japan and the United States have signed a government procurement agreement. After a year and a half of that agreement being in effect, there is very grave doubts that the agreement is being honored to the degree to which it was intended and which I think the Congress had anticipated when it passed the Trade Act of 1979.

In the same area of the MTN Codes, there is the Export Subsidies Code. The United States has signed agreements with two countries, Pakistan and India, both of which gave us so-called commitments, which I guess can be described as being about as leaky as a sieve, and surely also not meeting the requirements or the intentions of the Export Subsidies Code.

No. 3, the effect of foreign industrial policies on our trading system. We gave some examples, for example, the decline in the exports of our aircraft, largely due to the capture of a large part of the market by Airbus Industry, a firm owned and operated by four countries with some junior partners in a way which our manufacturers here cannot match.

Another example is the loss of a major share of our domestic steel market to imports from nationalized, subsidized, and government-owned industries abroad. Again, these industries received benefits which our companies cannot match.

Finally, the most recent example, which was written about a couple of days ago in the Wall Street Journal, is that of the activities of the Japanese Government in turning the domestic machine-tool industry into, in effect, an export machine through cartelization, and thereby capturing part of our market, again, because of benefits that our own industry could not match.

Finally, we mention the exchange rate issue. This is the real invisible hand affecting United States-Japanese trade balance, adding perhaps a very substantial sum—the number is under some dispute, but it could be as much as $1,500 to $2,000—to the cost advantage of a Japanese-built car sold in this country. Nothing to do with U.S. wage levels; nothing to do with skills of labor; nothing to do with R. & D. Again, neither country is doing anything about it.

In all of these issues that I have mentioned, Mr. Chairman, I hope that you will note that our industry in most of these cases is quite competitive with the industries of other nations. What is not competitive is our Government. And in effect, what we are trying to compare here is not industry versus industry, but industry and government versus industry and government, and the government part of our partnership is not functioning as it should.

This legislation, we think, or the thinking that goes behind this legislation we hope, would make us more aware of the role that Government has got to play in effectuating an open trading system. Unless we take some of the steps that this legislation envisions and which have been suggested in the debate which has taken place during the consideration of the legislation, we think it will be hard to sustain political support for an open trading system and without political support I suspect that you are going to find it harder and harder to sustain that kind of a system in the future.

Thank you.

I will also introduce if I may, Mr. Chairman, the counsel of LICIT, that is, Alan Wolff, who is known to many of you as a former Deputy STR.

Senator Danforth. Thank you very much.

Do you find in business and labor an increased move toward protectionism? Is there a growing sentiment toward protectionism, would you say?

Mr. Samuel. I think, in a way, it is going both ways, Senator. There is a growing awareness in the labor movement, and I will let Mr. Hobbs speak for business, that international trade is going to play a major role in our economy to a degree which we never dreamed of 10 years ago, and I suspect, which we may not dream about 10 years from now.

At the same time, as they become aware that we are no longer an industrial island, and we are going to have to live with the effects of international trade, there is the contrary disappointment and dismay as to what is happening to the international trading system, that we are competing on an unfair basis.

Senator Danforth. Do you think it will be increasingly difficult to maintain the support of business and labor for free trade policies if we are viewed as not being able to compete on a fair basis with other countries?

Mr. Samuel. I think that is certainly true of the labor sector. We are losing too many jobs to stand by idly if it is perceived, as it is perceived now, that we are losing these jobs for reasons that are not our fault and not due to the workings of a fair and free trading system. Perhaps Mr. Hobbs would like to answer for business.

Mr. Hobbs. Well, we don't have free competition or a free trade system. We are competing in a world where too many governments are interfering with artificial barriers. That is certainly true in the electrical equipment business. We have been competitive for many, many years—two or three decades, if not longer. If the prices that are paid for large electrical equipment were open, if the procurement was open even to inspection in Europe and Japan, I am confident it would be shown that American prices over the years, through depression, good years and bad, since World War II at least, have been at least 20 to 30 percent below the prices in those countries. This is not a matter of American competitiveness; it is a matter of restraint by foreign governments against the imports of our products.

So I think it is not a question of a free trade system or free trade policies, it's a question of asserting American rights to have the same market access that the foreign producers have to this market.

Senator **DANFORTH**. Senator Heinz?

Senator **HEINZ**. No questions.

Senator **DANFORTH**. Senator Bradley?

Senator **BRADLEY**. Just one question.

In your testimony, Mr. Samuel, you mentioned the effect that high interest rates have on the value of the dollar and how that might affect trade. Have you seen this in the industries of your union?

Mr. **SAMUEL**. Well, I think it has played a major role, Senator, in United States-Japanese trade generally. High interest rates in this country have had an effect on the valuation of the dollar as well as, of course, what the Japanese have done to the valuation of the yen. The two facts together have put us in a very noncompetitive position.

Senator **BRADLEY**. How much of our trading imbalance with Japan do you think you can be traced to the high interest rates resulting in on overvalued dollar?

Mr. **SAMUEL**. I really could not estimate that, and I'm not sure such figures exist. If they do, we will try to look it up.

Senator **BRADLEY**. Well, let me come at it this way: If you had flexible exchange rate and interest rates on a downward path, would you expect a dramatic increase in your U.S. export?

Mr. **SAMUEL**. Yes, I would. I wonder if I could ask if Mr. Wolff has a thought on this, so I could ask him to respond?

Mr. **WOLFF**. The only additional comment I would have is that yes, a 30- to 40-percent difference in price is bound to make a difference in our competitiveness in the Japanese market to the extent that price plays a role. In a number of areas price does not play a very substantial role, either due to the type of product that we sell, whether agricultural, or other raw materials, or aircraft, or because of the barriers that exist—in electronics, because the market is organized and price doesn't play much of a role at all. Certainly in terms of import competition the overvaluation of the dollar substantially expands the bilateral surplus that Japan has with us. It has to.

Senator **BRADLEY**. What kind of thought have you given to the development of market for the United States in the Pacific Basin nations? What do you think we have to do to gear up—not to just get access to the Japanese market—but to compete successfully with the Japanese in any number of other markets which—aggregate potentially will be much bigger over the next decade?

Mr. **HOBBS**. Well, I can speak to that on large electrical equipment, Senator. The United States constitutes approximately, roughly, 50 percent of the free world market for large electrical generating equipment for power transformers, and the other large equipment used by utilities. The rest of the free world is about another 50 percent.

The Europeans and the Japanese have access to our market in a very volume-sensitive business. We do not have access to theirs. Now, the Third World offers an extensive market, an extensive export opportunity. Other governments subsidize their export financing to a point that we cannot match from the United States. I won't go through the whole thing about the Eximbank, but if we can't get financing which is competitive with what their governments supply to their exporters, then we are out of those markets. We can compete on price and on value and on delivery time and on service, in every way except the cost of export financing.

So, we need that very badly if we are to compete where we have complete technological equality or superiority.

Senator **Bradley**. And the cost of money is related to what?

Mr. **Hobbs**. Well, the cost of money from France and Japan is related to whatever they decide to provide it for, not to the market. It is not a free market price. We are trying to go to a free market export loan concept in this country, but there is no free market. We are competing against governments, and companies simply can't do that.

Senator **Bradley**. So, if you were going to assess a weight to things that we should do, are you implying that subsidizing interest rates is as important as virtually any other thing we can do?

Mr. **Hobbs**. Well, either make them stop it or meet them with equal subsidies, if that is what we have to do.

Senator **Bradley**. Of interest rates?

Mr. **Hobbs**. Of interest rates in the export lending market.

Senator **Heinz**. Would the Senator yield? There is an excellent bill.

Senator **Bradley**. Just one more question.

When did this become a problem? When did it come to your notice?

Mr. **Hobbs**. Only in the past 2 or 3 years, as we've had an extreme increase in interest rates in the United States.

Senator **Bradley**. So if we return to balanced macroeconomic policies, resulting in a declining interest rate, this problem that you have alluded to might wither away?

Mr. **Hobbs**. If the Japanese and the French and the British and the Spanish and other countries that subsidize their rates don't go below those market rates, which they are now doing and which they have been doing.

If we assume a free market, we can compete, if the interest rates are truly free. The Japanese rates are a little less than half what they might be if there were a free market.

Senator **Bradley**. Are you saying that up until 2 years ago it was a free market?

Mr. **Hobbs**. Substantially. Our Eximbank was competitive, and we were getting a significant share of international export business in large equipment.

Mr. **Samuel**. Senator, if I could add a word in reply to your original question, there is another aspect which we mention very briefly in our testimony, and that is the industrial practices of our trading partners.

If we are to break into the Pacific Rim in a major way, obviously we are not going to be alone. We are going to have to compete with other countries such as Japan and others. At the present time, as we indicated in our testimony, we are operating with perhaps one hand tied behind our back. And I think the Houdaille study of what happened in the Japanese machine-tool industry is a good example.

I am not here to suggest that we adopt a full-blown national industrial policy, but certainly we are going to have to recognize that that's a competitive factor we have to match, and perhaps we should begin to look at what the components of such a policy are which we could adopt.

Senator DANFORTH. Gentlemen, thank you.

Senator HEINZ. Mr. Chairman, I didn't think I would take time to ask questions, but Senator Bradley's fine questioning stimulated my thinking about it.

Gentlemen, 2 years ago you said that we were, with respect to export credit financing, relatively competitive. Also, is it not true, 2 years ago we had just really started implementing—having passed the 1979 Trade Agreements Act—the Tokyo round. And the tariff cuts were about to go into effect and in some cases were in effect at that time. Is that correct?

Mr. HOBBS. Yes; except, as far as our industry is concerned, the tariff cuts make no difference; it is other barriers.

Senator HEINZ. I understand that. Now, in the intervening 2 years, would you say there has been an increase in nontariff barriers?

Mr. HOBBS. Not in our industry. They were there before then. They haven't changed much. We have been bringing this same story to Congress for over 20 years in my personal memory, and to the different administrations. There has been very little change in the restrictive buying practices in Europe and Japan in large electrical equipment. This is not a new development.

Senator HEINZ. It is not. On the other hand, for example, we negotiated a procurement code.

Mr. HOBBS. That's right, but they left all this equipment out of the code.

Senator HEINZ. Well, I understand that. I ended up with the purpose of the question. In theory, there was agreement, was there not, to open up procurement in France and Japan and in a lot of other countries to beat down these nontariff barriers. Is that not correct? Isn't that the theory?

Mr. HOBBS. That's my understanding, Senator.

Senator HEINZ. Now, the second question is did it happen?

Mr. HOBBS. No.

Senator HEINZ. All right. That's the point.

Howard Samuel, I pose the question as I did to Mr. Hobbs. Has there been an increase in nontariff barriers in your experience over the last 2 years?

Mr. SAMUEL. Well, I think some; yes. The export requirements is a relatively new phenomenon. Mexico actually issued its order decree 7 or 8 years ago, but it hasn't taken effect until the last couple of years. Most of the others are a more recent vintage.

Senator HEINZ. Like the Canadian energy policy?

Mr. **Samuel**. Pardon?

Senator **Heinz**. Like the Canadian national energy policy?

Mr. **Samuel**. Yes; and I think there are several other aspects. Certainly I think—and Alan Wolff, if you have a moment, may add to this—there is a much greater concentration on the part of many more countries in more and more areas in recent years.

Senator **Heinz**. Senator Bradley's question—and it was a good question—was: If we were reasonably OK 2 years ago or 3 years ago with respect to export credit financing, can't we just solve the problem now by being competitive, or finding a way to get everybody down, or to make the arrangement work? They could choose one, or they could choose them all.

But I don't want the record to leave out the fact that in the last 2 years, although it may not explicitly affect Westinghouse, Claude, but in the last 2 or 3 years there has been, as far as the hearings we have had in the Banking Committee and before this committee, there has been a rise in nontariff barriers that have really complemented and worked at cross purposes, of course, with the tariff reductions.

Mr. Wolff, would you agree with that or disagree with that?

Mr. **Wolff**. The term "nontariff barriers" used to refer to barriers at the border. What is happening is that governments are becoming ever so much more sophisticated in the means of intervention, directly with investors coming into their country, with respect to export performance requirements. Or take, in the case of France, the nationalizations.

If you made a tariff agreement on the basis of having a certain size market that was operating more or less freely, and the companies to which you were going to sell are nationalized, do they still procure on the basis of commercial considerations? Or do they procure on the basis of political considerations?

Senator **Heinz**. And in your judgment, which do they?

Mr. **Wolff**. Well, I asked a French diplomat that. He said, "That's a political question." [Laughter.]

Senator **Danforth**. Gentlemen, thank you very much.

Next we have Lee Greenbaum and Karl Hochschwender, representing the American Association of Exporters & Importers.

STATEMENT OF LEE GREENBAUM, PRESIDENT, KEMP & BEATLEY, REPRESENTING THE AMERICAN ASSOCIATION OF EXPORTERS & IMPORTERS

Mr. **Greenbaum**. Mr. Chairman and members of the subcommittee, I am Lee Greenbaum, president of the American Association of Exporters & Importers, and president of Kemp & Beatley.

With me today, on my right, are Robert Herzstein, former Under Secretary of Commerce for International Trade, who is head of our export committee and a partner of Arnold & Porter, a member firm; and Dr. Karl Hochschwender, first vice president of AAEI and director of public affairs of American Hoechst Corp.

The American Association of Exporters & Importers, formerly the American Importers Association, represents 1,400 U.S. company members engaged in the export, import, and distribution of goods worldwide. Included are many organizations serving the trade community—customs brokers, freight forwarders, banks, attorneys, and insurance firms.

We broadened the purpose and changed the name of our organization last year in response to a gradual shift among our members into exporting and to the widespread and deeply felt belief among our members that it was no longer realistic for us to focus solely on the concerns of importers. We realized that the policy of the United States toward imports must inevitably be tied in with the health of the international trading system and the ability of the American businesses to function successfully in the global marketplace.

We believe that your subcommittee is very usefully focusing on one of the critical problems in U.S. international trade policy, namely, whether the international trading system has produced the kind of equally open competitive world market that was envisaged when the GATT system was launched and which has been the objective of America's trade negotiations and trade concessions since 1947.

The GATT rules and the successive rounds of trade agreements have made a very good start. The benefits to the United States have been substantial. In spite of the highly publicized trade deficits of recent years, the U.S. trade performance in 1980 and 1981 was very good in aggregate. While the United States showed a $10 billion trade deficit with Japan in 1980, we had an $18 billion trade surplus with Europe that same year. In 1981 the trade deficit with Japan was $15.8 billion, while our trade surplus with Europe was $10.8 billion, in a year when the high value of the dollar attracted U.S. imports and hampered U.S. exports.

In our critique of the system as it operates today we must be mindful of these benefits and not take actions which would endanger them. However, the substantial progress made should not blind us to the problems the trading system still faces.

Past negotiations have greatly reduced tariffs and quotas and have made a good though incomplete start at reducing the nontariff barriers that result from governmental regulations. Our Government has begun to bring complaints of violations of GATT rules, and we support vigorous pursuit of U.S. rights under GATT through the GATT mechanisms when consultations do not produce reasonable results.

The reduction of those barriers has exposed a third layer of obstacles to the achievement of a genuinely competitive marketplace. These are the obstacles that result from the different business structures and different business practices in various trading nations. As the United States has reduced its tariffs and other barriers in response to international agreements, foreign businesses have found fairly ready access to our market.

American businesses are discovering, however, that all of our major trading partners do not maintain the same pro-competitive rules, transparency, and receptiveness to new competition that the U.S. offers. These structural and cultural practices may well be understandable in the light of past needs and resources of foreign nations when they were operating as national economies, but the same structures and practices can serve as obstacles to the integration of those countries into a global market. Those obstacles are particularly difficult for smaller and middle sized American companies; and yet, as our Government officials have frequently noted, it is among these companies that much of our untapped export potential may be found.

Large companies are also expressing unhappiness with the current situation.

We share the concern of this subcommittee, and we believe the problem warrants continuing legislative attention.

What should be done now?

First, we strongly support the provisions of both the Danforth and the Bentsen-Bradley bills, calling for continuing executive branch studies of the conditions affecting access for U.S. products in foreign markets. The problems and obstacles are complex and often subtle. They vary from one country to another and from one industry and product sector to another. In many respects the problems are intrinsically practical and must be dealt with through specific remedies that attend to practical details rather than through broad legislative fiats. Executive branch resources may well have to be augmented to meet that complicated new task.

Second, if it is discovered that U.S. trade is being impaired by government practices that are inconsistent with international rules, our Government should seek enforcement through the established GATT procedures, using the authority it already has. It may become desirable, also, to give attention to the adequacy of the GATT procedures and to seek improvements.

If it is discovered that impediments to foreign market access are resulting from governmental practices not covered by international rules, such as is the case with trade in various service industry sectors, the Executive should continue efforts to improve the rules.

As regards impediments to market access that are the result of structural or cultural barriers rather than governmental actions, the current proposals to amend section 301 of the Trade Act of 1974 would not remedy that problem. Structural and cultural obstacles would not be reached by section 301, which applies only to acts, policies, or practices of a foreign government or instrumentality.

Some of the bills being considered by this committee would amend section 301 to call on the President to investigate actions which may deny to the United States commercial opportunities in foreign markets substantially equivalent to those offered by the United States and to take retaliatory action if necessary to eliminate the practice. We are concerned that this approach would take us outside of the GATT rules and thereby subject our exports to retaliation.

Thus far we have commented solely on the problem of market access because that is the subject of the bills under consideration by this subcommittee. We would agree with others who have said that problems presently encountered by U.S. companies in foreign markets are also the result of the lack of price and/or quality competitiveness of American companies and because the dollar is badly overvalued relative to other key currencies, pricing U.S. goods out of the markets. Our high interest rates also delay very necessary modernization of plant and equipment, and we are very dismayed by many other self-inflicted wounds which weaken U.S. export efforts. However, the existence of those problems does not diminish the problem of market access.

We are submitting a fuller statement for the record.

[The prepared statement follows:]

STATEMENT

of

AMERICAN ASSOCIATION OF EXPORTERS AND IMPORTERS

before the

SUBCOMMITTEE ON INTERNATIONAL TRADE

COMMITTEE ON FINANCE

at

HEARINGS ON

RECIPROCITY

May 6, 1982

Mr. Chairman and Members of the Subcommittee:

I am Lee Greenbaum, President of Kemp & Beatley and President of the American Association of Exporters & Importers.

The American Association of Exporters and Importers, formerly the American Importers Association, represents 1400 U. S. company-members engaged in the export, import, and distribution of goods between the United States and countries throughout the world. The multitude of products sold by AAEI member companies cover a broad range from textiles and apparel, chemicals, machinery, electronics, footwear and food to automobiles, wines and specialty items. In addition, many organizations serving the trade community -- customs brokers, freight forwarders, banks, attorneys and insurance firms - are active members of AAEI.

We changed the name and broadened the purpose of our organization last year in response to a gradual shift of many members into exporting, and to the widespread and deeply felt belief among our members that it was no longer realistic for us to focus solely on the concerns of importers. We realized that the policy of the United States toward imports must inevitably be tied in with the health of the international trading system and the ability of American businesses to function successfully in the global marketplace. Increasingly, our members have found, American firms do not function solely as importers or as exporters, but as buyers and sellers in a global marketplace, where the origin and destination of goods is less important than the ability of our companies to compete effectively and on equal terms with other companies operating in the same marketplace.

When we revised our charter, we formed an export committee and asked Robert Herzstein, who was just leaving office as the first Under Secretary of Commerce for International Trade, to serve as the chairman of that committee on a pro bono basis. The position we are expressing in our testimony today was formulated with his assistance. Our organization will be looking closely at the practical problems encountered by American businesses in foreign markets. We expect we will be coming up with information and suggestions useful to the Executive Branch officials concerned with the implementation of the U. S. trade policy, and we will occasionally, as today, see implications for legislative policy that arise from our work with the practical problems of exporting.

We believe that your Subcommittee is, very usefully, focusing on one of the critical problems in U. S. international trade policy -- namely, whether the international trading system has produced the kind of open, competitive world market that was envisaged when the GATT system was launched and which has been the objective of America's trade negotiations and trade concessions since 1947.

The GATT rules and the successive rounds of trade agreements have made a good start. In our critique of the system as it operates today we must of course be mindful of these benefits and not take actions which would endanger them. However, the substantial progress made should not blind us to the problems the trading system faces today. If we do not deal with those problems in a constructive and effective fashion, the stresses and strains that result will themselves undermine our past achievements.

The present problem results from our discovery that there is more to be done in achieving an open market than what the GATT negotiations have focused on in the past. Past negotiations have greatly reduced tariffs and quotas, and have made a good (though incomplete) start at reducing the non-tariff barriers that result from governmental regulations.

Our government has begun to bring complaints of violations of GATT rules, and we support vigorous pursuit of U.S. rights under GATT through the GATT mechanism when consultations do not produce reasonable results. The reduction of those barriers has exposed a "third layer" of obstacles to the achievement of a genuinely competitive marketplace. These are the obstacles that result from the business structures and business practices in different trading nations.

As the U. S. has reduced its tariffs and other barriers in response to international agreements, foreign businesses have found fairly ready access to our market. We have an extraordinarily efficient nationwide distribution system which is receptive to new products, whether they originate at home or abroad. Our antitrust laws have prevented the domestic companies with longestablished market shares from erecting private barriers that would keep out new competition, in effect replacing the governmental barriers that had been dismantled. And, though our business system is large and quite complicated, it is highly transparent and experts are available -- in law, marketing, finance, and technology -- to help foreign competitors establish themselves in our market on terms of legal and practical equality with domestic enterprises.

American businesses are discovering that not all of our major trading partners maintain the same pro-competitive rules, transparency, and receptiveness to new competition. Integrated industry structures, and traditions of close collaboration within company groups and industry sectors, can mean that a new competitor from abroad, with a quality product that is price competitive, has difficulty finding customers. These structural and cultural practices may well be perfectly understandable in light of the past needs and resources of the foreign nations when they were operating as national economies. But the same structures and practices can serve as obstacles to the integration of those countries into a global market.

These obstacles are particularly difficult for smaller and middle sized American companies, who may not have the power or the endurance necessary to work their way, over a period of many years, into a foreign business system which does not have institutional channels that facilitate their entry. And yet, as our government officials have frequently noted, it is among these companies, often making competitive and innovative products, that much of our untapped export potential may be found. Large companies are also expressing unhappiness with the current situation.

We share the concern of this Subcommittee, and we believe the problem warrants continuing legislative attention. What should be done now?

First, we strongly support the provisions of both the Danforth and the Bentsen-Bradley bills calling for continuing Executive Branch studies of the conditions affecting access for U. S. products in foreign markets. The problems and obstacles faced by U. S. enterprises are complex and often subtle. They vary from one country to another, and from one industry and product sector to another. Some problems, such as foreign language and consumer preferences, may not be susceptible to any reasonable remedy. On the other hand, as we know from the U. S. experience in establishing competition policy, interlocking business relationships, rigid distributor relations, and reciprocal dealing practices which unreasonably suppress competitive opportunities can be altered. The ways to alter them may also vary greatly from one country or industry to another. In many respects, the problems are intrinsically practical, and must be dealt with through specific remedies that attend to practical details, rather than through broad legislative fiats. These studies offer the hope of gaining an understanding that is necessary to identify problems and devise specific and practical remedies.

We believe the Subcommittee should give attention to the question whether the current resources of the Executive Branch are sufficient to conduct the studies called for in the legislation adequately. Since our government has not historically been involved in industry sectoral policy, there is no substantial reservoir of personnel with the practical business and analytical skills needed for prompt, sensitive, and competent investigations of the sort that are needed. We hope the Subcommittee will satisfy itself that, if the studies were mandated and legislation adopted in this session of Congress, the Executive departments charged with responsibility will be in a position to locate and hire the experts needed for -- let us say -- studies of the conditions affecting the sale of U. S. auto parts in Japan, telecommunications equipment in France, and many others.

Second, our government should of course be charged with responsibility for enforcing legal rules governing our international trading system and for pressing for improvements.

- If it is discovered through the continuing studies or otherwise that U. S. trade is being impaired by government practices that are inconsistent with international rules, our government should seek enforcement through the established GATT procedures. It does not appear that additional legislation is needed to authorize the Executive to do this. However, as experience is gained with the existing GATT enforcement procedures, it may become desirable for the U. S. trade negotiators to give attention to the adequacy of those enforcement procedures and to seek improvements. It would probably be useful to express this concern in the legislative history accompanying any measure reported out by the Subcommittee.

- If it is discovered that impediments to foreign market access are resulting from governmental practices which are not regulated by existing international agreements, such as is the case with trade in various service industry sectors, the Executive should of course be expected to press for international agreements to regulate the governmental practices in question.

- When it is discovered that impediments to market access are not caused by governmental action, but are the result of structural or cultural barriers, our government is faced with a relatively new challenge. How should it proceed?

The current proposals to amend Section 301 of the Trade Act of 1974 would not remedy that problem. Some of the bills being considered by this Committee would amend Section 301 to call on the President to investigate actions which deny to the United States commercial opportunities in foreign markets substantially equivalent to those offered by the United States, and to take retaliatory action if necessary to eliminate the offending practice. We are concerned that this Section 301 approach would take us outside of the GATT rules and thereby subject our exports to retaliation. However, it is important to note that Section 301 applies only to acts, policies, or practices "of a foreign country or instrumentality." Thus structural and cultural obstacles which impede U. S. access to foreign markets would not be reached by Section 301.

Third, we believe the legislation, or its legislative history, should make clear that Congress is calling on the President to develop, in consultations with other governments, processes and techniques for achieving more equitable market access, for all trading nations, and to report back to Congress on his progress. As the studies discussed above reveal market access conditions that could be improved, our government should commence active and prompt discussions with the foreign government involved to devise improvements in the quality of the competitive marketplace. Work of this sort has been commenced by the Commerce Department and the Japanese Ministry of International Trade and Industry through the Trade Facilitation Committee, and results have in some cases been quite fruitful, though the process has not had the prominence and wholehearted support within our Executive Branch that it needs. Vigorous government consultations directed at specific problems may lead to improvements -- through simple adjustments of private business practices in some cases, through changes in national regulations or legislation (affecting business structure and practices) in other cases. Sometimes identification of the problem may itself suggest useful new forms of international agreements.

As the problems involved in this "third layer" of trade obstacles are more fully understood, we will be in a position to determine whether we wish to urge foreign governments to take on responsibility for eliminating private sector practices which unreasonably impair competitive opportunities in their markets. To achieve a genuinely effective global market that is open to competitors from all the participating countries, the national governments will have to take responsibility for preventing cartels, exclusive agreements, and other private arrangements that impede competition. In some measure, it will be necessary for the national governments to coordinate their competition policies. And a government that refuses to police anti-competitive conduct within its borders may be guilty of nullifying and impairing the right of access to its market that other nations enjoy under the GATT. A congressional mandate for the President to develop, in consultation with other governments, processes and techniques for achieving improved practical market access should of course include attention to national government efforts to prevent private anti-competitive practices.

Fourth we believe it would be desirable for Congress to express in legislation that a goal of U. S. trade policy is that businesses operating in the global marketplace should enjoy practical conditions of market access in each country which are substantially equivalent to those encountered in other countries. (We do feel that this does not mean that the United States should decide that its own practices constitute the appropriate standard of market access with which all other countries should comply.)

We believe few who have given attention to the growth of the international trading system since World War II, and who are concerned with its future vitality, will disagree with the goal we siggest. The statement of policy would establish that the United States is concerned not just with the official laws affecting international access to individual country markets, but also with the competitive conditions that are within the control of powerful, but non-governmental, business organizations in each country. The policy would also establish that the United States is concerned not just with the evenhandedness of trade concessions as they are negotiated, but with the quality of the market that ultimately results from the negotiations. Obviously an open market with substantial equivalence of access for all participants is not a goal which will be achieved immediately. But unless that goal is clearly expressed and vigorously pursued, our business managers, investors, and workers will lose confidence in the trading system. They will see it as exposing them to competition that is unfair, and they will seek protection from it.

The statement of policy would constitute important guidance for U. S. officials and for foreign nations interested in working with the United States to create a more satisfactory global marketplace.

Our comments thus far have been concerned solely with the problem of market access, because that is the objective of the bills under consideration by this Subcommittee. There are some who argue, however, that market access is not a problem deserving of legislative attention at this time. We wpi;d agree that ny problems being encountered by U. S. companies in foreign markets at the present time are also the result of the lack of competitiveness of American companies -- either because they are not technologically proficient and cost competitive, and/or because the dollar is badly overvalued relative to other key currencies. pricing U. S. goods out of foreign markets. Our high interest rates also delay very necessary modernization of plant and equipment. Furthermore, we are also dismayed by other self-inflicted wounds which weaken U. S. export efforts. However, the existence of these problems does not diminish the problem of market access,.

Our Association has long supported the international trading system by opposing U. S. tariff barriers and other obstacles to imports. American business has benefitted from the progress that has been made. We feel that the linkage between imports and exports should not be overlooked or minimized. U. S. moves which are viewed as inconsistent with international agreements would of course raise the danger of retaliation against U. S. exports. As businessmen we are increasingly operating in a global market even when we sell at home. We must be concerned that we can reach all the customers that our competitors are able to reach without regard to national boundaries. We are pleased that this Committee is examining ways to preserve and build upon the progress toward an efficiently functioning global market that was begun thirty-five years ago.

Thank you, Mr. Chairman.

Senator **Danforth**. Thank you.

Mr. **Greenbaum**. Thank you for the extra time.

Senator **Danforth**. Do you have a separate statement, Doctor?

Dr. **Hochschwender**. No, sir.

Senator **Danforth**. Senator Heinz?

Senator **Heinz**. No questions.

Senator **Danforth**. Senator Bradley?

Senator **Bradley**. Thank you, Mr. Chairman.

I would like to question all of you or one of you as a spokesman: Do you think that section 301 of the 1974 Trade Act offers sufficient causes of action to provide an effective basis for retaliating against foreign acts denying us fair market access?

Mr. **Herzstein**. I will try to answer that, Senator Bradley.

We feel that section 301 probably provides as much authority as the President can usefully use at this time. It certainly gives him authority to go after practices that violate trade agreements, and it clearly gives him authority to go beyond that where the practices are unreasonable or discriminatory.

Now, we don't feel that it goes to these structural or cultural barriers or what one might call "private sector barriers," because 301 does seem limited to foreign government practices.

Senator **Bradley**. Do we need a new and unilateral cause of action for section 301?

Mr. **Herzstein**. We think it is dangerous to try to structure one at this time. That's why we strongly endorsed the study provisions of the various bills that are up. We think that it is more important to get a close grip on the problem that ourselves and some of the earlier witnesses, the semiconductor and the LICIT witnesses, were talking about. It will then be possible to fashion remedies, but we are concerned about trying to create a cause of action now.

Senator **Bradley**. So you would be leery of causes of action based on foreign denial as opposed to of what we define as reciprocity causes of action based on commonly acknowledged rights under international trade agreement?

Mr. **Herzstein**. Well, yes. We think that it's hard to tell other nations that they have to take our standard of access as being "the" standard and go after them with a retaliatory proceeding in those circumstances.

Senator **Bradley**. What do you see are the dangers that would derive from a precedent of asserting U.S. trade rights which are not recognized, or frankly don't even derive from international agreement?

Mr. **Herzstein**. Well, we think other nations may start asserting rights that they have defined against us. That's the basic danger.

Senator **Bradley**. Which ones are you afraid of?

Mr. **Herzstein**. Well, Europeans, I think.

Senator **Bradley**. Which sectors are you concerned about?

Mr. **Herzstein**. We are very vulnerable in agriculture.

Senator **Bradley**. In what way?

Mr. **Herzstein**. With the Europeans. They always hold soybeans up as a key American export which their industry is eager to close in on if we start following protectionist practices of our own. That's at least one that I have heard on a number of occasions.

I think that we already are seeing, of course, restrictions on our high technology exports, but those are normally flowing from industry practices and industrial policies of foreign countries. But they could use a retaliatory provision to go after those if they wanted to.

Senator **Bradley**. We frequently talk about how our commercial interests are best realized under the rule of law. If you weakened the rule of law under GATT, do you think that that would adversely affect our economic interests?

Mr. **Herzstein**. Yes, I think it would. I think we have to keep trying to build the rule of law. My own feeling is we are operating only about half under the rule of law and the other half in the jungle at the present time. And I think it is in the interest of all of us to try to expand those horizons but not be naive about the fact that a lot of it is still jungle fighting.

Senator **Bradley**. "Expand them" meaning expand the scope of the international agreements?

Mr. **Herzstein**. That's right, by getting a better understanding of the practices and the problems, and then devising internationally recognized rules for governing them.

Senator **Bradley**. Thank you very much.

Senator **Danforth**. Gentlemen, are you familiar with the supplemental tariff authority contained in the Bentsen/Bradley bill, which would enable the administration to unbind the tariffs in the GATT?

Mr. **Herzstein**. Yes, we are.

Senator **Danforth**. What is your position on that?

Mr. **Herzstein** Well, we think that is also dangerous at this time, Senator. We really don't feel, as a nation, our executive branch has had an opportunity to focus adequately on these problems.

It may well be that much broader retaliatory authority is going to be needed at some time, but we think it is dangerous to use it until you can point it more specifically.

I might say, in addition, on these studies, we strongly favor them. We also, in our full statement, indicate that we feel probably the resources of the executive branch would need to be augmented in order to do a good job on those studies.

Senator **Danforth**. You mentioned your concerns about what the Europeans would do in the agricultural area. You are not concerned about their present attitude in agriculture?

Mr. **Herzstein**. Oh, yes. Yes. It's just that they've got farther they can go.

Senator **Danforth**. Do you mean it is bad, but it could get even worse?

Mr. **Herzstein**. Oh, yes. No question about it. I don't recall the figures right now, but our soybean exports are quite substantial to Europe. They have lots of soybean substitutes they can use if they want to start closing those out.

Mr. **Greenbaum**. We are also concerned about their subsidies being used to invade third country markets for agricultural products.

Senator **Danforth**. I am, too. And, of course, we have gotten that precedent now. But what can we do about that? What could we do about their subsidies? What could we do about their corn gluten situation? I suppose one approach could be, well we had better not do anything for fear that they will do something even worse.

Mr. **Greenbaum**. That is not the approach we are suggesting. We are not pacifists in this matter; nor are we pacifists in the Export-Import Bank funding situation. If our interest rates go down, they will lower their interest rates for their exports, too. It is not simply a matter of relief in the terribly high interest rates that we face; it is a much more conscious policy.

Mr. **Herzstein**. Senator, could I add a note on this question of followup from the studies and retaliation?

We didn't stop in our full statement our recommendations with the suggestion that the studies be conducted. We think it is important for the President to followup with his existing authority, but we also think it would be useful for Congress to do two other things. One is to, in legislation, call on the President to develop in consultation with other governments processes for achieving practical equivalents of market access between countries.

The second additional recommendation is that Congress express in legislation that a U.S. policy goal is that businesses operating in the global marketplace should enjoy practical conditions of market access in each country which are substantially equivalent to those encountered in other countries. In other words, we think there is a lot to be said for practical access; it is just that one country shouldn't hold up its standard as the sole one.

Senator **Bradley**. Mr. Chairman, could I just ask one other question?

Senator **Danforth**. Sure.

Senator **Bradley**. The question of unbinding, which we have talked about at some length, that is embodied in one of the bills, doesn't that same authority already exist under section 125?

Mr. **Herzstein**. Yes, I think it does, Senator. I should have mentioned that in my answer.

Senator **Bradley**. Well, then, how in your view is it significantly different if we simply explicitly give authority to the President to do what he already has the authority to do under section 125?

Mr. **Herzstein**. Well, I guess it gets back to the old question of if it was already there, why did Congress pass another statute? I think people are bound to try to assume that Congress wasn't going through a meaningless gesture, and that it must have something more in it. So it could be interpreted as creating a greater requirement.

Senator **Bradley**. Under that line of reasoning we passed the all-savers certificate last year. [Laughter.]

Mr. **Herzstein**. I didn't say that principle was universally adhered to.

Senator **Bradley**. Thank you, Mr. Chairman.

Senator **Danforth**. Thank you, gentlemen.

Our next witness is George Burns. I am delighted to see Chairman Mills with us today. May I call you Mr. Chairman?

Mr. **Mills**. Thank you, sir.

STATEMENT OF GEORGE BURNS, PRESIDENT, CONSUMER PRODUCTS DIVISION, SCM CORP.

Mr. BURNS. Mr. Chairman, my name is George Burns. I am president of SCM Corp.'s Consumer Products Division. Smith-Corona typewriters is the largest part of that division.

Smith-Corona greatly appreciates and welcomes the opportunity to bring the Congress up to date on the continued illegal dumping of portable electric typewriters from Japan and the devastating impact that dumping is having on the domestic portable typewriter industry.

Mr. Chairman, you see before you a very discouraged man, and, without being melodramatic, you may be witnessing the dying gasps of an industry, an industry strangled by its own Government.

Two days ago the Court of International Trade in New York confirmed that employees of the Commerce Department do indeed have vast discretionary authority to interpret the antidumping law. They have exercised that authority in a way that flies in the face of congressional intent. As an American businessman, I know that the U.S. Congress did not intend that technologically advanced, thoroughly innovative U.S. industries should be at an unfair disadvantage. And I don't think Congress meant for skilled dedicated U.S. workers to lose their jobs while ideologically motivated bureaucrats toy with formulas to the benefit of foreign companies that bend our law to their advantage.

Let me stress at the outset that I recognize that dumping is not the subject of this hearing, but our problem has existed for nearly a decade without a shred of evidence that anyone in a position of influence cares. It is an example of the kind of unfair trade practice that has led to the demands for reciprocity that this committee is now considering.

The reciprocity bill might benefit some American industries, but because of the limited size of the Japanese typewriter market it will not help Smith-Corona. What will help our industry and others faced with dumping is more effective enforcement by the Commerce Department of the trade laws already enacted.

Mr. Chairman, the long, sad history of Smith-Corona's treatment at the hands of the bureaucracy is set forth in a statement I have submitted for the record. May I please summarize it briefly.

After 7 years, two separate investigations, two determinations of dumping, in 1980 the International Trade Commission finally ruled that Smith-Corona was indeed being injured and issued an antidumping order. We thought we would see an end to dumping and the beginning of fair competition.

Mr. Chairman, even though our Government declared that the Japanese have been violating U.S. law, this was not enough to restore fair competition. After dumping was found, the importers of Japanese typewriters asked for and got a "quick reinvestigation" from the International Trade Administration. The accountants and lawyers for the importers made numerous claims for adjustments, the effect of which was to reduce or eliminate the dumping margins without any changes in actual prices in the marketplace. These accounting claims were "verified," and accepted by the Commerce Department employees at the headquarters of the Japanese companies with representatives of MITI looking on. Smith-Corona was not permitted to attend the session, and our evidence was rejected by Commerce.

Thus, a law that was supposed to measure and correct price discrimination became a game of clever accounting that helped the importers explain away dumping margins.

To make matters worse, Commerce Department employees, as a matter of policy, exercised broad discretion to interpret these regulations in ways that are favorable to importers. We believe that some of these interpretations surely do not reflect the intent of Congress, because their effect has been the near destruction of American industry and the loss of thousands of American jobs.

Mr. Chairman, we are talking about nothing less than a foreign industry which, through a persistent scheme of illegal dumping, sets its sight on the last surviving international competitor, takes aim, and fires. And nothing, not even U.S. law, stands in the way of that bullet.

Somehow, I just can't imagine that if my company were convicted of violating Japanese law, that the Japanese Government would ever be making discretionary interpretations to help me avoid Japanese legal remedies and thereby cause the loss of thousands of Japanese jobs. But that's exactly what our Government has done.

During the floor debate in the Senate on the 1979 trade bill, Senator Moynihan said, "I support it on the condition that the pledges made by the administration that American workers' jobs will be protected from unfair and often dishonest dealing will be kept." Almost 1,000 Smith-Corona people don't have jobs today because these pledges have not been kept. We would, therefore, like to submit proposals to help correct this situation for the committee's consideration.

Mr. Chairman, it is awfully late in the day for Smith-Corona. As our industry follows the path of the television industry and others, it will be a clear signal to other companies here and abroad that we really don't give a damn about meaningful enforcement of our laws governing unfair trade.

Our industry's vitality has been sapped by a decade of illegal dumping without effective Government intervention. When this industry goes, as the direct result of proven violations of American law, the message is going to be clear, and other industries are surely going to follow.

Thank you.

[The prepared statement follows:]

STATEMENT OF SMITH-CORONA

PRESENTED BY

GEORGE F. BURNS

BEFORE THE

SUBCOMMITTEE ON INTERNATIONAL TRADE

OF THE COMMITTEE ON FINANCE

UNITED STATES SENATE

May 6, 1982

Good afternoon. My name is George Burns. I am president of SCM Corporation's Consumer Products division. Smith-Corona typewriters is the largest part of that division.

Smith-Corona greatly appreciates and welcomes the opportunity to bring the Congress up to date on the continued illegal dumping of portable electric typewriters from Japan, and the devastating impact of that dumping on the domestic portable typewriter industry.

Mr. Chairman, this may be the last gasp of a dying industry, strangled by its own government's bureaucracy. A few days ago, the Court of International Trade in New York City confirmed that the Commerce Department has vast discretionary authority to interpret the antidumping law. They have exercised that authority in a way that flies in the face of congressional intent. As an American businessman, I simply refuse to believe that the U.S. Congress intended that technologically-advanced, innovative U.S. industries should collapse or that skilled, dedicated U.S. workers should lose their jobs while bureaucrats toy with formulas to the benefit of foreign companies that bend our laws to their advantage.

Let me stress at the outset that I recognize that dumping is not the subject of this hearing. But our problem has existed for nearly a decade without a shred of evidence that anyone in the government cares. It is an example of the kind of unfair trade practice that has led to the demands for reciprocity this Committee is considering.

A reciprocity bill might benefit many American industries, but because of the limited size of the Japanese typewriter market, it would not help Smith-Corona. What will help our industry and others faced with dumping is more effective enforcement by the Commerce Department of the trade laws already enacted.

The U.S. portable typewriter industry once employed some 20,000 workers in the Northeastern states. Of the well-known names Royal, Remington, Underwood and Smith-Corona, only Smith-Corona survives, and our position is increasingly threatened.

At one time, Smith-Corona employment in the Cortland, New York area was over 5,000. At the beginning of 1981, it was around 4,000. Over the course of 1981, 600 Smith-Corona typewriter workers lost their jobs. An important reason was the dumping of an increasing flood of portable typewriters from Japan.

This is not just our opinion. Agencies of the U.S. government found in three separate investigations between 1974 and 1980 that sales of these imports were being made at less than fair value.

We first saw Japanese portables being dumped in this country in the early 1970's. In 1973, we asked the Treasury Department to investigate. Treasury found that Japanese portables were indeed being dumped in the United States.

In 1975, the International Trade Commission held a hearing. When the Justice Department came to the hearing to argue on behalf of the Japanese, we began to understand the kind of problem we faced. The ITC ruled, 3-2, that even though Japanese suppliers had substantially penetrated the market, there was no injury because Smith-Corona was still profitable.

It seems you have to go out of business before you get anyone's attention.

After the ITC's "dumping but no injury" ruling, imports showed an immediate and dramatic increase. Between 1976 and 1978, annual imports of Japanese-made portables more than doubled to over 500,000 units.

In 1979, Smith-Corona again asked the Treasury Department to investigate. And again, Treasury determined that Japanese made electric portables were being sold here at less than fair value. This time the dumping margins were enormous: 48 per cent for the largest Japanese supplier, 37 per cent on average for all Japanese suppliers.

At last, in April 1980, the ITC ruled unanimously that the United States industry, consisting solely of Smith-Corona, had suffered injury as a result of the dumping. They could hardly have ruled otherwise in the face of reduced employment, lower production, lower sales and substantially lower profits. In May, the government issued an Antidumping Duty Order.

We thought we might finally see an end to the dumping and the beginning of fair competition.

But the Japanese avoided that prospect when they immediately asked for and got, from the Department of Commerce's International Trade Administration, a "quick" reinvestigation of dumping margins. They were able to do this under a new provision of the Trade Agreements Act, a statute Congress thought would expedite the process, not raise another hurdle for U.S. business.

In August 1980, Commerce made the astounding finding that during the reinvestigation period (January-April 1980), the dumping margins on the Japanese imports had been virtually eliminated. For example, the margins for the largest importer were somehow reduced from 48% to 4%, even though U.S. prices for the Japanese models were basically unchanged during the period under investigation.

Having once more avoided the remedy for their ongoing violations, in 1981, in the teeth of the recession, imports of Japanese portables reached 659,000 -- a 29 per cent increase over 1980. And the dumping continued.

In December of 1981, we had the privilege of presenting testimony on this subject before the Trade Subcommittee of the House Ways & Means Committee.

Since then, our sales of American made portables have continued to drop in the face of the continued dumping and the recession. In 1982, we found it necessary to lay off another 200 people in Cortland and to close typewriter plants in Scotland and Canada.

Now we are awaiting the results of the Commerce Department's annual review and determination of new dumping margins on the imports of Japanese portables. The results are due soon and they are critical to the future of our industry.

Sadly, the government's rulings that our Japanese competitors have been violating U.S. law were not enough to restore fair competition. Those rulings only got us by the first few hurdles. There are no penalties for our past injury. And there may be little or no penalty at all. After dumping was found, the accountants and lawyers for the Japanese made numerous claims for "adjustments" to the actual Japanese prices for differences in relative costs between sales made in the U.S. and sales made in Japan.

These accounting claims were "verified" and accepted by Commerce Department employees at the headquarters of the Japanese companies with representatives of MITI looking on. Smith-Corona was not permitted to attend these sessions. Our own evidence was rejected by Commerce.

The effect of the accounting adjustments is to reduce or eliminate the dumping margins without any changes in actual prices in the marketplace. A law that was supposed to measure and correct price discrimination has become a game of clever accounting enabling importers to explain away dumping margins.

To make matters worse, Commerce Department employees, as a matter of policy, exercise broad discretion to interpret their regulations in ways that are favorable to the importers. We believe that some of these interpretations surely do not reflect the intent of Congress because their effect has been the near destruction of American industries and the loss of thousands of American jobs.

Somehow, I just can't imagine that if my company was convicted of violating Japanese law, the Japanese government would ever be making discretionary interpretations to help me avoid Japanese legal remedies and thereby cause the loss of thousands of Japanese jobs.

Last week, as mentioned earlier, a Federal Court ruled that the Commerce Department has broad discretion to interpret the law. From our experience, the bureaucrats in the Commerce Department who are exercising this life and death power have not used the law to defend American industry from illegal foreign competition, as Congress intended, but have instead acted to shield foreign industry from paying the dumping duties that would restore fair competition.

During the floor debate in the Senate on the 1979 trade bill Senator Moynihan said, "I support it on the condition that the pledges made by the administration that American workers' jobs will be protected from unfair and often dishonest dealing will be kept". Alot of Smith-Corona people don't have jobs today because those pledges have not been kept. We would, therefore, like to submit proposals to help correct this situation for the Committee's consideration.

Mr. Chairman, it is awfully late in the day for Smith-Corona.

If our industry follows the television industry and others, it will be a clear signal to other companies, here and abroad, that we don't care about meaningful enforcement of our laws governing unfair trade. Our industry's vitality has been sapped by a decade of illegal dumping without effective government intervention. If this industry is allowed to go, as the direct result of proven violations of American law, the message is clear. And others will surely follow.

This is an industry where the Japanese have had no edge in technology or quality. Smith-Corona survived because it was the inventor of the portable electric typewriter and the industry's technological leader. We have modern, efficient manufacturing facilities and a skilled and dedicated workforce which gave us manufacturing costs that rivaled the Japanese even with their lower paid workers.

We chose to have faith that the laws of this nation would be enforced. The result has been burdensome and costly legal proceedings; success in establishing violations but failure in obtaining relief; and continuous, ruinous dumping.

I am going to retire next year. Occasionally somebody asks why I care what happens to this small industry after I'm gone. But I do care because I continue to believe that we could win this fight, hands down, if everybody played by the rules. So I care. I care as an employer because thousands of people have given their working lifetimes to this industry. And I care as an American because we, as a nation, could do better.

Thank you.

Senator **Danforth**. I have some questions from Senator Moynihan which he would like you to answer for the record. We will give you those. Would you respond to them?

Mr. **Burns**. Yes, sir.

[The questions follow:]

QUESTIONS FOR THE SMITH-CORONA WITNESSES

Senator Moynihan.

Mr. Burns, I can understand your frustration. In fact, I share it. I have written the Secretary of Commerce three times so far on this matter, I have questioned him at hearings before this Committee, and yet there continues to be no meaningful response from him or his Department. We know that the Japanese have been dumping portable typewriters into our market for over eight years now. You have followed the existing laws in good faith, and yet you have been unable to secure relief from these unfair trade practices to which the law entitles you.

In light of your experience, what aspects of our trade laws do you think is most in need of reform and in what ways.

Mr. Burns.

Enforcement of the antidumping remedies needs to be strengthed if the law is to be effective. Technical interpretations within the asserted discretion of the administering agency have continued to frustrate the effective enforcement that the Congress attempted to ensure when it enacted the 1979 Trade Agreements Act. We would appreciate the opportunity to forward specific proposals to the Committee shortly.

Senator Moynihan.

Could you give this Committee a very clear description of the ways Smith-Corona has been injured by dumped Japanese typewriters.

Mr. Burns.

In April, 1980, the International Trade Commission ruled unanimously that Smith-Corona was being injured by dumped portable electric typewriters from Japan. The ITC found that Smith-Corona had been injured in the following ways: Production and capacity utilization had dropped, sales were lost (including the loss of all business with the largest retailer of portables, Sears Roebuck), hours of employment per worker declined, sales declined and net operating income declined.

During the past two years, Smith-Corona's health has continued to deteriorate. Profits have given way to substantial losses, sales are off by one third and employment at our plants in Cortland and Groton, New York is down by about 1,000 people.

Senator Moynihan.

Smith-Corona has fought this fight for over eight years. Our New York facilities are the last surviving portable typewriter manufacturing plants in the U.S. (All the other American manufacturers -- Royal, Remington, and Underwood -- turned to Japanese suppliers and closed their own large manufacturing plants.) When the Department of Commerce reviews dumping margins this year, if they don't come up with a more reasonable and more realistic margin, what do you think will happen to Smith-Corona?

Mr. Burns.

Smith-Corona has sustained losses for the past several years. Without an early end to discriminatory pricing practices which have been repeatedly confirmed by our own government, and a chance to compete fairly on the merits, Smith-Corona would be forced to move production off-shore, exporting our jobs as our competitors did a decade or so ago.

Senator Moynihan.

I think that much of this debate over reciprocity has arisen not only from the intransigence of our competitors to open their markets to our goods, but also from the increasing lack of enforcement over time of our trade laws.

Do you agree?

Mr. Burns.

I agree that the debate over reciprocity is an outgrowth of past ineffective enforcement of our unfair trade practices laws. Unfortunately, there seems to be a widespread belief that enforcement of these laws is protectionist and inconsistent with America's commitment to free trade. I disagree. The fact is that without fair trade, we cannot really have free trade since unfair practices like dumping distort the free market system and prevent competition on the merits.

We have heard suggestions that there may be additional reasons for lack of enforcement, including so-called foreign policy reasons. In any event, reciprocity legislation will not help Smith-Corona.

Senator **Danforth**. What would you like us to do?

Mr. **Burns**. We would like to determine exactly what it is that motivates the Department of Commerce in their interpretation of laws in a way that seems counter to Congress specific intent.

Senator **Danforth**. You don't think it is a statutory problem, but that the statutes are clear?

Mr. **Burns**. Exactly.

Senator **Danforth**. Have you raised this issue with the Commerce Department?

Mr. **Burns**. Sir, starting backward from Secretary Baldrige, we have been to Mr. Brock, to Mr. Brady; we have repeatedly raised the points.

Senator **Danforth**. What is their response?

Mr. **Burns**. Their response, sir, is that they are performing within the statutes, that they have the interpretive power. We have never quarreled with the statute. We quarrel and continue to quarrel with the motivation behind their interpretation. We have no agreement. We simply do not know what motivates the Department of Commerce.

Senator **Danforth**. You don't have any quarrel with the laws as written?

Mr. **Burns**. No, sir, we don't. No, sir.

Senator **Danforth**. There is an argument that they can make that they are within the law. But you think they are doing it in disregard for the American industry?

Mr. **Burns**. Well, if we consider the intent of the law and know exactly why the law was written, and if we presume that the Department of Commerce, quoting them, "are operating within the proper intent of the law," I offer that an industry represented only by Smith-Corona now in the United States—everybody else having gone—an industry where a very short time ago we had 5,000 people and it is now down to about 3,000 people, an industry where presently 55 out of 100 typewriters sold in the United States are Japanese electric portable typewriters, an industry that has seen Government support our contention of dumping, we certainly question that their intent or their actions are operating to the advantage of our industry. The effect has just been absolutely devastating.

Senator **Danforth**. We spent a lot of time a couple of years ago on the whole question of dumping, subsidies, and enforcement. It appeared at that time that we had to have a set of principles, that where there was a violation of the law there should be enforcement of the law, that there should be not only enforcement but that it should be something that could be accomplished in a reasonable period of time.

At that time we visited with a number of people who were knowledgeable about the problem of dumping and about the enforcement process, and over a year and a half we laboriously worked out the legislation. We tried to provide for more certain and swift enforcement of the remedy.

Some say that we ended up creating something which was maybe even more complex than we were trying to deal with.

I don't know the facts of your case sufficiently to give a comment one way or another, but it does seem to me that the job of American Government should be to listen to the complaints of our own people and attempt to at least give them some benefit of the doubt.

It oftentimes seems to be the policy of other countries' governments to do absolutely everything they can possibly do to increase exports from their countries and to limit, so far as possible, any imports. That is their Governments' policy. And it seems so often that the reaction of our Government is, "Well, if this is being done by another country, why, this must be fine."

I can imagine your personal exasperation, fighting the battle for 10 years and losing. As I say, I don't know enough about it to have any particular judgment one way or another; but I do feel that, while other countries have been doing their best to push the interests of their businesses, it seems to me that in the United States we almost have a presumption in favor of foreign countries.

Mr. **Burns**. In the case of Smith-Corona, sir, that is absolutely true. We are, as I indicated, a company that remained. Everyone left—Royal, Remington, Underwood. They are all either now part of a Japanese situation or selling Japanese machines. We remained because we thought we had the law on our side, and we thought that in due process of the law, we would be able to get what we were entitled to. And we are not talking about relief, and we are not talking about quotas, and we are not talking about duties or tariffs. What we have been talking about is the ability to compete on a fair basis, and no one listens. And they haven't listened.

Terence Stewart [counsel for Smith-Corona]. Along those lines, Senator, the company, while it has a case in court and while that case is likely to be appealed in light of the adverse determination, assuming that the agency has the discretion which it believes it has and which the Court of International Trade said it has, some of the proposals that Smith-Corona has prepared are designed to help Congress enunciate more clearly for the administration how that discretion may be exercised and whether or not the current exercise of that discretion is in fact in keeping with the legislative intent.

It is Smith-Corona's belief that the statute, the antidumping law, since 1921 has been primarily concerned with looking at prices. The law as administered has become a game wherein cost accounting enables foreign competitors to orchestrate expenses in the home market to eliminate the price disparity that exists between home market pricing and pricing to the United States. And Smith-Corona's pain is not the intent of the law.

Second, in certain cases such as the television industry and the steel industry, certainly in Smith-Corona's case in the typewriter industry, a very technical interpretation has been made which, in our opinion, is a total license for dumping. There is an adjustment that is called the exporter's sales price offset.

The law, when it was originally enacted and when it was reenacted in 1979, where related parties in the foreign country and the United States were transferring goods, the law was set up to attempt to establish a proxy for an arms length transaction. That proxy has been aborted by the interpretation pushed by the agency, and we would greatly appreciate the Senator's and this committee's attention to the proposals that Smith-Corona will present so that it can determine if the interpretation made by the agency is in fact in keeping with the congressional intent. I think that is what Smith-Corona would hope, in the light of the reciprocity and in light of the review of the trade laws and whether or not they are being effective, might be accomplished.

Senator **Danforth**. All right. We will look at your proposal and spend some time looking over it.

Mr. Chairman, would you like to add anything?

Mr. **Mills**. Nothing, except that, Senator, I thought it would be helpful to you in writing a law to find out just exactly how a perfect law has not been administered, one that I wrote back years ago. You have to be careful. [Laughter.]

Thank you, sir.

Senator **Danforth**. Thank you, Mr. Burns.

Mr. **Burns**. Thank you, Mr. Chairman.

[Whereupon, at 4:37 p.m., the hearing was concluded.]

[By direction of the chairman the following communications were made a part of the hearing record:]

STATEMENT OF
RALPH T. MILLET, CHAIRMAN,
AUTOMOBILE IMPORTERS OF AMERICA, INC.

Introduction

Mr. Chairman and members of the Subcommittee, I am Ralph T. Millet, Chairman of the Automobile Importers of America, Inc. (AIA), and a Director of Saab-Scania of America. Accompanying me is our Counsel, John B. Rehm. AIA is the association of major automobile importers in the United States. A list of AIA members is attached.

I will limit my prepared remarks today to S. 2094, the so-called "reciprocity" bill introduced on February 10, 1982, by Sen. John C. Danforth (R-Mo.), the Subcommittee Chairman. S. 2094 would amend Section 301 and related sections of the Trade Act of 1974 (19 U.S.C. 2411-16, "Section 301") to permit the President to take retaliatory action against the products, investments or services of any major industrialized country if that country is deemed to have denied "commercial opportunities substantially equivalent to those offered by the United States" with respect to the same, or other, products, investments or services. In so doing, S. 2094 would establish a new basis upon which action could be taken under Section 301. Such action must "take into account" -- but need not comply with -- U.S. trade agreement obligations.

AIA is sympathetic with this Subcommittee's desire to promote reciprocity in international trade. This concept has served as the basis for the international trading system under which the United States has prospered during the past 34 years. AIA supports such reciprocity as a means to increased and more open international trade, if it is achieved within the existing international trading system. In that regard, AIA endorses the March 24, 1982, statement of U.S. Trade Representative William E. Brock, III, before this Subcommittee that any effort to promote reciprocity in interntional trade should adhere to the following four principles:

> First, it must be absolutely consistent with current obligations under the GATT and other international agreements.
>
> Second, it must stress multilateral rather than bilateral or sectoral solutions.
>
> Third, it must focus on strengthening existing international institutions and expanding international agreements to include those areas, such as services, investment and high technology, not presently covered.
>
> Fourth, it must strengthen the negotiating mandate and flexibility of the President in his efforts to achieve a more liberalized world trading system and a reduction of barriers to U.S. workers and enterprises. (Emphasis added).

AIA feels strongly that S. 2094 not only fails to adhere to these principles, but would undermine and perhaps destroy the international trading system. If that should occur, U.S. industry, and U.S. consumers, would be the ultimate losers.

* * * * * *

I wish to make six points today, which are discussed briefly in the following statement:

(1) the GATT system encourages international trade;
(2) the GATT system has created a climate in which the United States has prospered;
(3) the GATT system contains objective standards that must be satisfied before a GATT country may impose import restrictions;
(4) S. 2094 would violate the GATT;
(5) S. 2094 would invite international retaliation and a reduction in international trade; and
(6) international trade retaliation outside the GATT system would hurt U.S. industries and U.S. consumers.

1. The GATT System Encourages International Trade

The international trading system established by the General Agreement on Tariffs and Trade (GATT) embodies a collective approach to trade problems consistent with agreed principles which encourage international trade. These include: (a) most-favored-nation treatment, which ensures that all imports are treated in a like manner; (b) national treatment, which ensures that, once entered, imports are treated like domestic products; and (c) the observance of bound rates of duty, so that countries can rely upon the tariff concessions that they have obtained in multilateral trade negotiations. These principles establish an orderly and reliable system in which international trade can flourish and grow.

2. The GATT System Has Created a Climate in Which the United States Has Prospered

AIA concurs in the statement of Secretary of Commerce Malcolm Baldrige before this Subcommittee on March 24, 1982, that "[t]he United States has been well-served by the GATT system and that system has shown itself to be an adaptable force for trade liberalization through its various negotiating rounds."

Since the establishment of the GATT in 1948, United States imports and exports of goods and services have increased substantially, as indicated in the February, 1982, Economic Report of the President ("President's Report"), at 233:

Year	U.S. Exports ($ billion)	U.S. Imports ($ billion)	Net Export Balance ($ billion)
1950	14.4	12.2	+2.2
1960	28.9	23.4	+5.5
1970	65.7	59.0	+6.7
1980	339.8	316.5	+23.3
1981	366.7	342.9	+23.8

During the past 34 years, the United States has enjoyed a net balance of exports of goods and services over imports in 32 of these 34 years. As stated in the President's Report, at 174-177:

> Foreign trade has become a vital factor in U.S. business activity and employment. In 1980 exports and imports of goods and services each represented over 12 percent of the gross national product. Twenty years ago exports were less than 6 percent of GNP; imports, less than 5 percent. Much of this shift occurred in the last decade, during which exports and imports as shares of GNP have about doubled.

* * *

> The gradual opening of the world economy to trade in the postwar period has brought major benefits both to the United States and to our trading partners. Long experience has shown that the benefits of trade trend to be mutual. Competition, whether domestic or international, fosters the allocation of resources to relatively more productive activities. Better products, at lower prices, appear in the market-place. Consumer choice is expanded. Technologies are more readily diffused. Inflationary pressures are reduced. With time, productivity, and hence income, rise.

3. The GATT System Contains Objective Standards That Must be Satisfied before a GATT Country May Impose Import Restrictions

In evaluating the GATT system and in attempting to remedy perceived deficiencies in that system, the Administration and the Congress should analyze the United States' international trade performance as a whole rather than with particular countries. As stated in the President's Report, at 180:

> It is particularly important not to become unduly preoccupied with the trade or current account balances with a single foreign country. Any policy to reduce a bilateral imbalance by restricting imports is likely to reduce the absolute volume of trade, and in consequence, the level of economic well-being of both countries, and could have wider repercussions. A far more constructive approach would be for the nations with restrictive trade practices and institutional barriers to imports to reduce systematically those obstacles to the freer flow of trade and investment.

To the extent that the United States takes action to remedy alleged unfair trade practices on the part of its trading partners, it is important that such action take place within the GATT system. For that system contains objective and internationally accepted standards that must be satisfied before a GATT country may impose import restrictions. These include the following:

> (a) Article XIX of the GATT requires that imports must be a cause of serious injury to a domestic industry before they may be restricted;
>
> (b) Article VI of the GATT establishes standards for proving the existence of dumping, subsidization and material injury which must be satisfied before antidumping or countervailing duties may be imposed; and
>
> (c) the complaint procedures in Articles XXII and XXIII of the GATT ensure that no restrictive action will be taken by a GATT country against another GATT country unless the GATT countries find that the GATT country's benefits have been nullified or impaired by that country.

4. S. 2094 Would Violate the GATT

S. 2094 would depart from both the GATT rules of commercial conduct and objective standards for restrictive action. Its concept of "substantially equivalent" commercial opportunities is nowhere to be found in the GATT or any related agreement. Moreover, there is no definition of that concept in S. 2094. Does it, for example, contemplate that all countries have equal rates of duty? If so, it runs counter to the GATT. Does it anticipate parity in the volume of trade between two countries? If so, it is inconsistent with the GATT. The notion of "substantially equivalent" commercial opportunities is undefined and, perhaps, undefinable. Yet it is the touchstone in S. 2094 for restrictive action by the United States. S. 2094 thus repudiates the GATT principle of agreed rules for the conduct of international trade.

S. 2094 would also deviate from the GATT in that it would use subjective standards for restrictive action and thus would permit the United States to do as it pleases. If the United States cannot settle a trade problem through the GATT system, it can under S. 2094 make a subjective judgment whether the other country has provided "substantially equivalent" commercial opportunities. If it finds it has not, it can then take restrictive action whether or not such action is in compliance with GATT obligations. For S. 2094 only requires the President to take such obligations into account -- not to observe them.

Thus, it should be clear that S. 2094 would operate outside of, and conflict with, the GATT system.

5. S. 2094 Could Invite International Retaliation and a Reduction in International Trade

S. 2094 could permit the United States to restrict imports from another GATT country without satisfying GATT requirements, inviting retaliation by that country within or without the GATT system. Irrespective of the form of such retaliation, it could invite counter-retaliation by the United States. Under S. 2094, such counter-retaliation would probably follow the pattern of the initial import restrictive action, and occur outside the GATT system. In short, action by the United States outside the GATT system is likely to involve the world in a vicious circle of retaliation that would undermine, if not destroy, that system.

By authorizing trade restrictive actions outside the GATT system, S. 2094 would invite an uneconomic and harmful return to protectionism. As stated by Murray L. Weidenbaum, Chairman of the President's Council of Economic Advisors, on March 9, 1982:

> Much experience has shown that domestic intervention in response to often small but outspoken groups seeking to protect a particular industry tends to set off a chain reaction of external intervention. We must take great care to avoid generating a surge in such a reaction. That is my concern with the very recent rise of the issue of reciprocity.
>
> * * *
>
> I suggest that in today's environment there are serious risks that the instrument will dominate the objective -- that "retaliation" will dominate reciprocity. Retaliation also risks chain reactions. And we are not invulnerable. We have plenty of home-grown barriers with which others might play the same game against us.

Such a development would undoubtedly result in a reduction in the overall volume of international trade. As stated in the President's Report, at 178:

> [I]mport restriction by one country may invite others to retaliate. Pressures for retaliation, which tend to strengthen when, as now, output growth rates are declining and unemployment is rising, are one of a number of forces threatening to stem the growth of world trade.
>
> * * *
>
> Such pressures for further government intervention reflect a potentially troublesome "neomercantilist" view which stresses export expansion to the near exclusion of all other factors in a healthy international trading climate.

In other words, S. 2094 could greatly encourage the trend toward protectionism that is prevalent today and that is reminiscent of mercantilism. Major trading countries are under considerable pressure to increase exports and reduce imports. If this mood intensifies, world trade will decline and not grow, as countries pursue parochial commercial policies. S. 2094 could significantly abet that process.

AIA urges that the United States take full advantage of its rights under the GATT to deal with trade problems. However, any imposition of import restrictions must be consistent with U.S. obligations under the GATT. In this way, the United States can advance its own interests while supporting and strengthening the multilateral system of world trade.

6. International Trade Retaliation Outside the GATT System Would Hurt U.S. Industries and U.S. Consumers

Trade restrictive actions outside the GATT system would hurt U.S. industries and U.S. consumers since they would lead to actions designed simply to protect U.S. industries, inviting them to postpone the steps necessary to meet world competition while raising costs to consumers and reducing choices available in the marketplace.

It is important to recognize that the benefits from an open international trading system are derived as much from reductions in barriers to imports as from expansion of exports, since the revenue received abroad from U.S. imports can be used to purchase U.S. goods and services. As stated in the President's Report, at 178-179:

> Restrcting U.S. imports would reduce the amount of dollars available to those in other countries who would buy our wheat, aircraft, chemicals, or machinery unless we made up the difference by loans to foreigners. In some cases, the connection between

> imports and exports is even more direct. Import restraints can reduce employment and profits in our more productive export industries.
>
> * * *
>
> Competitiveness that is impaired by market forces should not be restored by raising tariffs or subsidizing export industries. Such actions simply protect the trade-dependent industries, inviting them to postpone the steps necessary to meet world competition while raising costs to consumers and reducing the choices available in the market-place.

During the past 34 years, the United States has enjoyed tremendous benefits from international trade, with a growth in our exports of goods and services to more than 12% of the GNP and a positive export balance during 32 of these 34 years. In the long run, the United States and other countries will only suffer if they slip back into a mercantilist and unilateral way of resolving trade problems, such as those that would be authorized by S. 2094.

Conclusion

AIA supports the GATT system of reciprocal trade agreements that, during the past 34 years, has increased the volume of international trade to the past and present benefit of the United States. Any actions designed to promote such reciprocity in international trade must be within the GATT system in order to ensure the preservation of that system. However, S. 2094 would depart from the GATT system and, in so doing, threaten its destruction. AIA strongly urges the Subcommittee to pursue the goal of a more open international trading system through existing procedures, to the ultimate benefit of U.S. industries and U.S. consumers.

Thank you.

MEMBERS OF AUTOMOBILE IMPORTERS OF AMERICA, INC.

ALFA ROMEO
BMW
DELOREAN
FIAT
HONDA
ISUZU
JAGUAR ROVER TRIUMPH
LOTUS
MAZDA
MITSUBISHI
NISSAN
PEUGEOT
ROLLS-ROYCE
SAAB-SCANIA
SUBARU
TOYOTA
VOLVO

Statement of the American Plywood Association on trade barriers impacting the shipment of U. S. softwood plywood to Japan

Presented to the International Trade Subcommittee
of the U. S. Senate Finance Committee

The American Plywood Association, representing approximately 80 percent of the U. S. producers of softwood plywood and other structural panels, welcomes the opportunity to update the Subcommittee and Congress on the lengthy process of attempting to establish a market for our softwood plywood in Japan.

In the view of the Association, the 18-year history of talks aimed at gaining entry to the market is one of the more conspicuous examples of the frustrations encountered by U. S. industry as a whole in efforts to gain a measure of trade reciprocity with the Japanese.

The Association has conducted numerous meetings and exchanged millions of words in technical consultations with Japan since 1964. Only since last month, largely in response to the strong attention now being directed to trade inequities between the two countries by our Federal Government and Congress, has there been any hint of progress toward resolution of the issue.

It is important to recognize that the market for plywood in Japan is the world's second largest, exceeded only by the U. S. domestic plywood market. While the Japanese plywood industry has in the past concentrated on production of hardwood panels from Southeast Asian logs for both decorative and construction applications, a significant transition is under way. Japanese mills are increasingly turning to radiata pine, a softwood species found in South America, Australia and New Zealand. They are also interested in any other species of softwood that may be available to them. The move toward softwoods indicates a growing awareness of vast untapped markets for structural plywood in Japanese home building. It is also influenced by the increasing scarcity and cost of Southeast Asian logs.

Beyond the current global economic slump, American softwood plywood producers are convinced there is a large market in Japanese residential and general construction for cost and energy-efficient modern plywood and lumber systems. The U. S. industry believes this market will provide plenty of opportunities for Japanese and American producers alike.

Two major trade barriers have esentially blocked the entry of American softwood plywood to Japan -- the inability to gain acceptance of our construction grade plywood in Japanese plywood standards, and tariffs of 15 to 20 pecent on imported softwood plywood.

The American Plywood Association has been endeavoring to resolve the standards issue for many years. We have submitted large numbers of sample panels to Japan for testing and have passed all the necessary strength tests under the Japanese standards. In fact, 134 U. S. CDX (sheathing) panels tested by the Japanese in early 1980 met their requirements or were shown to be equal to or better than domestically produced lauan plywood.

In spite of these results clearly demonstrating the adequacy of American softwood plywood, Japan's representatives continued to raise numerous arguments against our plywood. In the opinion of the American Plywood Association, this was further evidence of the long-standing Japanese policy of deliberately delaying a decision on the issue. Many of the modifications sought were also motivated by the Japanese need to consider use of softwood veneer such as radiata pine from New Zealand in combination with lauan veneer for Japanese domestic production -- not by an interest in accommodating our sheathing grades of plywood.

The first sign of a genuine interest by the Japanese in reaching at least a degree of resolution on the standards issue has come only recently, at talks held in Tokyo the week of April 4. Officials of the Japanese Ministry of Agriculture, Forestry and Fisheries, which administers Japan's plywood standards, met with representatives of our Federal Government and the American Plywood Association.

The Japanese indicated that they are making an effort to comply with the agreement made at the conclusion of the Multilateral Trade Negotiations (MTN) in 1979 that the two nations should work together to develop a mutually acceptable performance standard for plywood entering Japan. (This agreement was to have been completed within one year of the MTN declaration.)

From the standpoint of the U. S. softwood plywood industry, some encouragement was derived from the recent Tokyo meeting in that Japan's representatives made a number of proposals for revisions to the Japanese Agricultural Standard which would be compatible with the U. S. Product Standard PS 1, and therefore acceptable to the U. S. On the other hand, two major areas of disagreement were identified, relating to critical section and white speck.

Critical section is a PS 1 veneer grading rule governing bending strength which is effective (or triggered) only when a veneer defect exceeds a certain size. Japan's critical section rule would apply regardless of defect size.

White speck is the residue left by the action of the fungus Fomes pini. (The fungus itself is killed when veneer is dried.) The Japanese have expressed objections to the presence of the fungus in softwood plywood on the grounds that it may constitute rot or decay, and that veneer openings resulting from white speck might serve as a host for other organisms.

The U. S. industry believes that both of these technical objections can be overcome. Our industry has undertaken to supply Japan with additional information and test data used as the basis for our critical section rule by the end of April. The American Plywood Association has repeated an invitation to the Japanese to visit the APA Research Center in Tacoma, Wash. to review U. S. test methods and data.

Concerning white speck, the Association has emphasized that veneer is subjected to such high temperatures during the veneer drying and pressing operations that any remaining fungus is sterilized. An invitation has also been extended to the Japanese to further discuss the problem with personnel at the U. S. Forest Products Laboratory in Madison, Wis., as well as other knowledgeable Forest Service personnel. The Japanese have responded that they will give consideration to such an invitation and to other information bearing on the subject.

It was also encouraging to hear from the Japanese that the process of developing a mutually acceptable softwood plywood standard could conceivably take less than six months. At the same time, the critical section and white speck issues are significant enough to make current Japanese proposals unacceptable to the U. S. Intensive technical collaboration will be needed between the two sides to resolve the outstanding issues expeditiously.

While a measure of progress can be reported on the standards obstacle, the second major roadblock -- tariffs -- remains as a near-insurmountable barrier to shipments of the principal softwood plywood grades.

The Subcommittee should know that at the 1979 Multilateral Trade Negotiations, most of the major trading nations agreed to reduce plywood tariffs by as much as 60 percent on many items. The U. S. in particular made very liberal concessions, agreeing to slash duty on hardwood plywood from Japan to 8 percent from 12 to 20 percent -- a reduction ranging from 33 to 60 percent. In addition, the U. S. and most other nations agreed to start the reductions in 1980. Japan's grossly inadequate response to date has consisted of flat refusal to reduce the 15 percent duty on sheathing and sanded grades of plywood and to offer only minor phased reductions in its 20 percent tariff on specialty plywoods. Further, Japan will delay even starting those reductions until this year, two years after most of the other trading nations started their major reductions.

The net effect of so-called tariff "concessions" announced by Japan to date will be minimal in terms of benefits to U. S. softwood plywood producers, who still face prohibitive tariff barriers for their major sheathing and sanded lines.

The American Plywood Association supports the strong effort being made by the Federal Government to influence Japan toward positive action in removing or at least substantially easing its heavily protectionist duties on plywood imports.

The support of Congress has also been important -- and will continue to be important -- as we try to maintain the small but welcome degree of momentum that is now apparent in favor of the U. S. position on the standards issue. The industry looks forward to similar progress on tariffs.

We ask the Subcommittee to take note of the fact that the U. S. has a huge trade imbalance with Japan in the case of plywood. The clear winner is Japanese hardwood plywood, which enters the U. S. on much more favorable tariff terms (currently at a 12 percent duty level and scheduled to drop to 8 percent by January 1, 1984).

In 1980 Japan shipped the U. S. 147 million square feet of hardwood plywood priced before shipping costs at $52.7 million. The U. S. shipped Japan 8 million square feet of softwood plywood worth about $2 million. In value, the Japanese shipped 24-1/2 times as much plywood to the U. S. in 1980 as was shipped to them. In 1979 it was 41 times as much.

The American Plywood Association will be glad to provide further information to the Subcommittee and Congressional staff on any aspect of the U. S.-Japan plywood relationship.

STATEMENT
ON
EQUIVALENT MARKET ACCESS
for submission to the
SUBCOMMITTEE ON TRADE
of the
SENATE FINANCE COMMITTEE
for the
CHAMBER OF COMMERCE OF THE UNITED STATES
by
Howard L. Weisberg *
May 6, 1982

The U.S. Chamber is a federation consisting of more than 236,000 business members, 2,800 local and state chambers of commerce, 1,350 trade and professional groups, and 44 American chambers of commerce abroad. We appreciate the opportunity to share our views.

The purpose of this statement is not to review specific bills on the important subject of equivalent market access for U.S. trade and investment but rather to address the generic problems of market access, the adequacy of current law, and what the future course of U.S. policy should be.

The Problem - Market Access

The term "reciprocity" began echoing through Washington a few months ago in an outpouring of speeches, articles, and legislative proposals. It took some time to sort out just what was meant by "reciprocity." Most of the legislative proposals seem to address the issue of market access, that is, how to assure that U.S. traders and investors have that degree of access to foreign markets due them under existing international commitments. Because the issue is market access and because "reciprocity" carries some

---

* Director, International Trade Policy

protectionist connotations, the U.S. Chamber believes that the legislative debate should avoid slogan concepts and, instead, should focus on where the United States is being shortchanged under international rules concerning access.

It is incumbent upon us all, while recognizing that a problem exists, to clearly identify it and keep it in proper perspective before attempting to legislate a solution. Certainly there is cause for concern. There is no question that some U.S. industries face fierce competition from imports while obstacles block their attempts to penetrate the foreign markets from which these imports originate. It sometimes looks like a one-way street. While this situation characterizes our trade with many countries, attention is focused predominantly on Japan, where formidable trade and investment barriers systematically frustrate U.S. traders and investors. A country like Japan, as a responsible member of the international trade system, cannot continue to limit access to its markets while maintaining a trade surplus with its major trade partners.

It is also important in your deliberations to bear in mind that focus on the trade deficit alone produces a narrow and distorted view of our international position. We should not become unduly preoccupied with the bilateral balances with a single foreign country. Note that Japan, for example, ran deficits in both trade and current account balances in two of the past three years. Remember also that the United States has profited immensely from the system of international commerce which has evolved from the chaos of the Great Depression and World War II. While the United States has run merchandise trade deficits fairly consistently for more than a decade, our balance of payments on a current account basis has been roughly in balance and we have had a surplus for the last three years. This surplus has resulted from significant positive balances in the services area and from net investment income which rose from less than $18 billion in 1977 to nearly $33 billion in 1980.

We must, therefore, be extremely careful in considering proposals which would fundamentally challenge the post-war multilateral system - a system which has allowed us to absorb tremendous increases in our costs of raw materials while maintaining an equilibrium in our external accounts. None of these conclusions lessen the need for action to redress the inequities that exist in access to many foreign markets. However, in determining the requisite action, let us not forget that the multilateral trade system generally works and that the United States profits by it.

An Approach

Where our trading partners fail to live up to their commitments, we must assert our rights. Where the internal characteristics of their economies, their domestic economic policies, or their cultural biases frustrate the objectives of the agreements we have negotiated, we must go back to the bargaining table. Our government must take up the cause of industries and individual companies when other countries do not play by the internationally accepted rules of the game. We must also consider whether new international agreements, covering as yet unregulated areas of economic activity, are necessary to advance our interests.

New U.S. legislation, however, is not needed to address inequities in market access. The Executive Branch already has tools sufficient to enforce U.S. trade rights and to secure equivalent market access for U.S. products, services, and investment. The most comprehensive is Section 301 of the Trade Act of 1974, as amended. Were the government to utilize this authority more vigorously, including increasing self-initiation of cases, whenever a serious problem comes to its attention, several objectives could be accomplished, including: (a) political and legal pressure on an offending government to end its unfair trade practices by the mere intitiation of a case; (b) "encouragement" of a favorable response by a foreign government by the threat of retaliatory action; (c) reinforcement in the eyes of the world of the commitment of the U.S. government to secure for U.S. concerns equivalent market access by the actual implementation of retaliatory action; (d) the easing of protectionist pressures upon the Congress; and (e) a demonstration to the private sector that the government intends to fully enforce U.S. trade laws, thereby encouraging more businesses to make known their particular trade problems.

Adequacy of Current Law

Section 301 provides the means to "enforce the rights of the United States under any trade agreement" and to respond to any foreign practice which is "unjustifiable, unreasonable, or discriminatory and burdens or restricts United States commerce." The objectives of Section 301 embody the intent of the various reciprocity bills which seek to remove discriminatory trade barriers to American products, services, and investment.

The fact that foreign barriers persist despite Section 301 seems to have led the authors of the reciprocity bills to the conclusion that this law is inadequate to meet its objectives. We submit that the inadequacy is one of implementation and not of authority.

The Chamber maintains that Section 301 represents a vehicle now in place for responding to unreasonable and unjustifiable foreign government actions against not only the merchandise trade of the United States but also

U.S. service industries and actions concerning aspects of U.S. foreign investments which are related to trade. The language and the legislative history of Section 301 support this position.

Merchandise Trade. The trigger words in Section 301 are "trade agreement" and "U.S. commerce" -- the complained of action must violate the former or adversely affect the latter. The basic concept of Section 301 was created in the Trade Expansion Act of 1962 (Section 252). In that and in successor laws (the Trade Act of 1974 and Trade Agreements Act of 1979), the same trigger words were used. There should certainly be no question as to the link between merchandise trade and both "trade agreements" and "commerce" and, consequently, no doubt as to the applicability of Section 301 to merchandise trade.

Services Trade. If there were ever any question of its applicability to trade in services, that doubt was eliminated by the amendments to Section 301 in the Trade Agreements Act of 1979. The definition of "commerce" in those amendments reads: "For purposes of this section, the term 'commerce' includes, but is not limited to, services associated with international trade, whether or not such services are related to specific products." This definition is specifically emphasized in the Senate Finance Committee's report language of the Act (Senate Report No. 96-249, p. 237). In addition, the responsive actions the President may take include "fees or restrictions on the services" of a foreign country.

Trade-related Investment. Beyond this explicit language, it is clear that the word "commerce" is employed in the widest possible context. The Senate Finance Committee report language from the 1979 Act refers to the "broad, inclusive nature of the language of section 301, which covers acts or practices, and applies to countries, not subject to a trade agreement" (p. 237).

Given the broad nature of the term "commerce" in Section 301, once investment is trade-related, it is covered by Section 301. Increasingly governments are conditioning their approvals of foreign investment upon undertaking by the investor of business practices which may well distort international trade (e.g. export performance and local content requirements). Though these trade distorting practices have their roots in investment and other nontrade policies, they too should certainly come under the purview of Section 301, as would any other trade problem. We recognize the difficulty in trying to distinguish between trade-related and other types of investment problems and believe that such a determination can only be made on a case-by-case basis. More often than not, however, foreign economic policies that hamper foreign investment are likely to have trade consequences.

Section 301 does not reach nontrade-related investment problems. In this area, the best approach is to develop a better international framework for addressing investment issues.

The Chamber supports USTR's current approaches toward foreign investment issues, including 301 cases and GATT action where appropriate, the negotiation of bilateral investment treaties, and attempts to place investment on the GATT Ministerial agenda. We must keep in mind that U.S. companies, as well as private investors, have a large stake in foreign investment.

Inadequate Enforcement by the Executive Branch of U.S. Trade Rights

For international trade policy to be an effective instrument of national will, it must be publicly supported, it must be implemented in an even-handed fashion, and it must be administered in a manner consistent with trade statutes, both in letter and in spirit. The alternative is an erosion of public support and an eventual change in policy.

The Executive Branch has the power, and indeed the obligation, to act effectively to protect the rights of American industries in the international marketplace. Unfortunately, the record to date under a succession of Administrations has been characterized by a lack of firm resolve in meeting this obligation.

While the Reagan Administration has done more than past Administrations to enforce U.S. trade rights - for example, by the initiation of a number of unfair trade practices cases - the perception continues among companies and labor that our government does not fight for the market access to which we are entitled nor does it protect the rights of domestic industries against the unfair practices of our trading partners. Until promise and performance match, public support for the Administration's trade policy will continue to erode and the perception will continue that there is inadequate authority to protect the rights of U.S. traders and investors.

The Importance of Working Within the System

While the position we have articulated today differs in several respects from the Administration's, we want to very strongly endorse one of the points which Ambassador Brock has emphasized as an essential principle of U.S. trade policy, that is,"...it must be absolutely consistent with current obligations under the GATT and other international agreements." Simply put, the United States must continue to work within the existing system of trading rules. Our responsibility, which is born out of our very selfish national interest, is to build upon and strengthen those rules, not to undermine and possibly destroy them.

It is fashionable in some circles these days to belittle the effectiveness of international rules in protecting U.S. interests. It is common to hear criticisms that other countries engage in wholesale violations of GATT and that the GATT is irrevelant to the new kinds of foreign trade barriers and distortions confronting U.S. exporters. While such generalizations exaggerate the actual state of affairs, there are significant elements of truth in them. That truth is no justification for our resort to similar practices, however.

The notion that retaliation beyond the scope of what is legitimately sanctioned by GATT is the solution to our international trade problems derives ultimately from the logic that our trading partners have more to lose than do we from a contraction of trade brought about by spiraling restrictions. That suggestion has always been an irresponsible one but never more so than today when almost one fifth of our gross national product is accounted for by imports and exports, when U.S. service companies and high technology firms are such strong and successful international competitors, and when U.S. foreign direct investment (which is so thoroughly integrated into the trading system) has grown so large. We, in fact, have much to lose by adopting a high-risk trade policy that may undermine the international trading system.

The tremendous expansion in world commerce that has occurred since the GATT came into force has been a major stimulus to global economic growth and welfare and to our own economy. Certainly, the revolutions in communications and transportation can be claimed to have played a major role in this expansion, as has the growth in national economies themselves (although the growth in world trade has almost always consistently out-paced domestic economic growth). However, it cannot be denied that an equally important factor has been the guidelines constraining national policy embodied in the GATT and other trade rules, creating a business environment much more conducive to expanding trade than had existed before. By substituting unilateral decisionmaking contrary to GATT for the deliberate (and admittedly sometimes frustrating) process of multilateral consultation and adjudication of disagreements, and by encouraging others to do the same, we risk destroying the stability and predictability upon which the continued growth of trade depends.

Moreover, very often in our well justified criticism of the foreign trade barriers faced by U.S. exporters, we sometimes forget, as Ambassador Brock quietly reminded us in a recent speech, that we ourselves are not pure. Some of our trading partners may deem our own restrictions on trade legitimate grounds for invoking the principle of reciprocity to close off markets now open to our most competitive industries.

The GATT clearly has shortcomings. As an agreement among sovereign states it necessarily reflects compromises with which no one country is completely satisfied. The alternative to it, unilateral decisionmaking, is ultimately a prescription for chaos. We are not, however, faced with a choice of accepting the rules as they are or throwing them out. The institution and rules of GATT have and can again be renegotiated to deal with the new challanges to open trade, and the United States has a major role to play in leading this process forward. It is to that end that our imagination and energy should be directed.

Chamber Recommendations

(1) The Administration should put all countries on notice by declaring as a matter of policy that the United States intends to protect the rights of its businessmen in the international marketplace, using existing domestic and international laws.

(2) To implement this policy, Section 301 should be used aggressively

to enforce international agreements and to remove impediments to the flow of U.S. trade and trade-related investment.

(3) If Congress wants to "send a message" to our trading partners, a concurrent resolution expressing congressional intent with respect to market access and calling on the Executive Branch to aggressively assert U.S. rights should be the vehicle.

(4) The United States should initiate negotiations to create a better international framework for dealing with services and investment issues. If Congress determines that special negotiating authority is necessary to accomplish this, the Chamber could support such an initiative.

(5) To meet the needs of U.S. companies for more and better information about foreign nontariff barriers, the Administration should more effectively carry out its responsibilities to provide this service.

Conclusion

We must not let the unfair practices of other nations deprive us of our comparative advantages in the world marketplace. We also must not contribute to the undermining of the international trading system under which we benefit. There objectives are compatible and can be fulfilled by a commitment to enforce existing domestic and international laws. The time for that commitment is now.

NDPC
National
Democratic
Policy
Committee

Lyndon H. LaRouche, Jr.
Chairman
Advisory Council
Warren Hamerman
Chairman
Barbara Boyd
Treasurer

Post Office Box 26 • Midtown Station, 233 W. 38th Street • New York, New York 10018 • (212) 927-4444

TESTIMONY OF RICHARD KATZ
ON PROPOSED TRADE 'RECIPROCITY' LEGISLATION

SENATE FINANCE COMMITTEE

MAY 6, 1982

I have studied the trade issue between the United States and Japan, and the trade issue more generally, for many years in my capacity as a writer for the newsweekly, Executive Intelligence Review. Those years of study have convinced me that if the current spate of 'reciprocity' legislation on trade is passed, perhaps the best result one might hope for is that its effect on our trade picture would be negligible. Certainly one cannot expect the reciprocity legislation to improve our trade situation, but there is a significant chance that this will help propel the international economy into the worst episode of trade warfare since the 1930s.

In 1981, according to estimates of a prestigious New York stock brokerage firm, world trade declined by 3 percent in nominal terms, and an astounding 5 percent in real terms. It will likely fall again in 1982, perhaps by another 3 percent. This would be the first back to back fall in world trade in real terms in the postwar period. The danger in this situation is that nations will fight each other over shares of a dwindling pie, instead of cooperating to expand world trade as a whole. Echoes of the disastrous 1930 Smoot-Hawley Tariff that did so much to worsen the Great Depression can be seen in this proposed legislation.

Even if that worst case possibility did not come to pass, most certainly the focus on Japan's import practices as the alleged cause of our economic turmoil would divert us from dealing with the real cause -- Paul Volcker's high interest rates, and the commitment of Volcker and his allies to turn the United States into a post-industrial, services economy.

Senators, under the impact of Paul Volcker's interest rates, our industry, our farmers, our laborers are being decimated. Many of our most productive industries -- auto, steel, rubber, construction, nuclear power, farmers -- are being shut down to less than 50 percent of capacity. Hundreds of farmers are going bankrupt every week. The savings banks are going under. Millions of workers are laid off. Corporations find it impossible to invest. And, by artificially raising the value of the dollar, the interest rates are crippling our exports while raising our imports.

Senators, if you wish to cut the budget -- $75 billion of which can be attributed to the direct or indirect effects of Volcker's interest rates on our debt payments, tax revenue, unemployment compensation, etc -- cut the interest rates. If you wish to cut inflation, cut the interest rates. If you wish to cut unemployment, cut the interest rates. And, if you wish the cut the trade deficit, cut the interest rates.

Unfortunately, a depression hysteria seems to have overtaken our policymakers, both in the administration and in this Congress. Congressman Dingell's reference to "those little yellow people" is only the most notorious example of Congressmen seeking to lay the blame for our economic turmoil on others. Another Congressmen told his constituents "imports are the enemy." The attitude we face is perhaps best personified by Senator Don Riegel in a guest column he wrote for the Japanese Yomiuri Shimbun. Senator Riegel, pointing to the hundreds of thousands of American autoworkers unemployed, the loss of 3 million American auto units of production, pointed the finger at Japanese auto imports. He declared, "No other nation would stand for this."

Perhaps it is true that no other nation would stand for this, but what the this country is tolerating in allowing the destruction of our auto industry is not Japan, but Paul Volcker. Since 1978, the peak of our auto production, American auto production has declined by 3.3 million units. During that period, imports increased by only 0.3 million, 1/11 of the amount. 300,000 units of imports did not cause the collapse of 3.3 million units. As Ambassador Brock said upon reaching agreement with the Japanese for them to lower their exports of autos by 10 percent in fiscal 1981, the breathing space given to our industry will mean nothing if interest rates are not lowered. What has happened to the $60 billion in auto investment our firms were supposed to make during the three years breathing space given by Japanese restraint? High interest rates have stolen it.

Only a year ago, just as the panacea of "opening

Japanese markets" is now preached, restraining Japanese auto exports was seen as the easy solution. The current 'reciprocity' proposals are just as futile.

A few years earlier, we had the same experience with steel. Since 1977 Japan has not increased its steel shipments to the United States by one ton, due to the protection given our firms by the Carter administration. We now see that this protection served only to enable U.S. Steel to gain the cash flow to buy up Marathon Oil -- and then to close down further steel plants on the grounds that they used up their cash through this buyup.

Interest rates alone are not the problem. Added to that is an anti-industry attitude in the Carter administration, unfortunately continued by many personnel of the current administration. The Commerce Department reports on steel and auto clearly state their view that sales, capacity and employment in those industries will not recover previous peaks, no matter how successful the economic recovery. This is policy, not prediction, a commitment to transforming our nation into a post-industrial, services economy, for which Volcker's interest rates are a tool.

No longer does the administration even claim it wants to save our industry by shutting down Japanese exports. Now

Ambassador Brock, Secretary Baldrige and others claim it is Japan's "closed markets" that are behind our trade and economic difficulties. The rationales change so fast that I am somewhat surprised that no one has yet claimed that the decimation our American housing starts is caused by Japan.

The "closed market" thesis is no more true than the previous arguments about Japanese autos and steel. On December 1 of last year, Commerce Undersecretary Lionel Olmer told this Commitee that, "the staggering trade deficits with Japan are not in general the result of lack of competitiveness...not caused by the strong dollar or high U.S. interest rates...not caused by U.S. apathy in developing the Japanese market...The fundamental reason for Japan's surplus is a profound inequality in our access to the Japanese economy." Under the influence of this thesis -- since echoed by others in the administration and Congress -- has come both the impetus for the reciprocity legislation, and the call by Olmer and others for Japan to virtually dismantle its entire business system.

Yet, I have tried and failed to get any backup from Commerce or elsewhere for this astounding assertion. I have tried and failed to get any reasonable evidence that if Japan completely opened its markets, the majority of our deficit would be eliminated. In fact, I suggest the evidence shows that the reason for the growth in the U.S. trade deficit with the world as a whole, and with Japan is due, not to closed markets in Japan or elsewhere, but instead to three major factors: Volcker's high interest rates and their distortion of the currency rates; the world recession induced by, among other things, the high interest rates; and the growing import dependence of American industry due to the longterm effects of a shift away from industrial investment and and short-term consequences of the past three years of high interest rates. Our trade deficit with Japan is part and parcel of our trade problem with the world as a whole.

In 1981, American exports fell 3.4 percent in constant value terms from 1980 -- in fact, from the first quarter of 1981 to the final quarter, our exports fell an astounding 13 percent after inflation -- yet, in the same year our imports rose by 2.5 percent. Even in the area of capital goods -- once our strongest suit -- exports fell by 5.7 percent while imports rose 18 percent despite our own severe recession.

The reason is clear: the world recession eroded demand for our products; the artificial upvaluation of the dollar made our products too expensive for others, and made theirs cheaper for our firms; and, our many years of underinvestment meant that despite a downturn in investment, whatever machinery our firms needed, they had to buy much of abroad. In many cases, our firms could not provide the needed products. Seamless steel pipes for energy projects had to be purchased abroad, mostly from Japan, because our steel firms could not gear up for this demand. For example, machine tool shipments domestically rose only 5 percent in 1981 and will fall in 1982, but imports of this critical good rose 12 percent, and imports from Japan rose 33 percent. In part, this is because Japan produces a much larger ratio of computerized, numerically-controlled machines than America does now.

The longterm erosion of our industrial capacity -- an erosion only accelerated by Volcker's measures -- has ended the huge surplus we used to enjoy in manufactured goods, that made up for our trade deficit in raw materials and oil. America's surplus in manufactured goods in current dollars fell from $7.6 billion in 1980 (itself a lower percentage than in previous years) to only $600 million in 1981.

Recession in Europe caused our current dollar exports to fall a shocking 12 percent in 1981. As a result of the world recession, our current dollar exports have fallen in every quarter since the first in 1981 to every sector of the world -- with the exception of Japan, and some other parts of Asia! Whereas U.S. world exports in current dollars fell 13% from the first to last quarter, exports to Japan rose 2.7 percent.

Recession, an overvalued dollar, and erosion of our industrial base -- not closed markets -- created our deficit, and our domestic econmmic problems.

The same kind of picture can be seen in regard to Japan. In current dollar terms in 1981 Japan increased its exports by 22 percent, versus an import increase of 5 percent in its imports from the U.S. The result was an increase in Japan's trade surplus with the U.S. from about $12 billion to about

$18 billion. This, it is charged, is due to Japan's "closed market". Yet, the U.S. deficit with Japan increased more than 50 percent in one year. Does anyone suggest that the Japanese market became 50 percent more closed in that year. Prior to the Khomeini oil shock and the Volcker revolution, Japan's trade surplus with the U.S. averaged no higher than $7-8 billion. Is it suggested that Japan's economy became twice as closed in the four years since 1978?

Instead, there is a much simpler explanation, which can be seen simply by looking at the actual trade figures. On the export side, a full 60 percent of Japan's astounding export increase can be accounted for by only three items, much of which was simply price increase. The three items are cars, specialty steel, and video tape recorders! Nearly 40 percent of the entire increase in Japan's exports is accounted for by increase in value of car shipments. Since, however, the number of units fell slightly due to the auto restraint, this was pure price increase. 40 percent of Japan's steel shipments here in 1981 were seamless tube for energy projects, which Japan supplied because our firms could not. The third big itmm accounting for 10 percent of the total increase in Japan's exports was simply video tape recorders.

Most of the rest of the increase in Japan's shipments here was industrial machinery, computer-telecommunications equipment, etc. Japan gained the sales rather than our domestic firms for the reasons stated above: artificial overvaluation of the dollar and erosion of our industrial base.

An enlightening picture of our export pattern in 1981 to Japan is seen, in light of the claims that Japan's closed market caused our difficulties. The major reason why our exports to Japan did not rise faster is because of the recession in Japan, as can be seen simply by noting which products rose and which fell. American exports to Japan grew in the following areas: agriculture, up 5 percent; chemicals up 18 percent; machinery up 14 percent; transport equipment up 9 percent; mineral fuels up 10 percent -- all the areas that the reciprocity bill advocates speak about. On the other hand, American shipments to Japan fell in the following areas due to Japan's decreased need for materials, due to industrial recession and housing decline: crude materials down 20 percent; manufactured materials down 11 percent; logs and lumber down 33 percent.

One final note on Japan's imports should be added. American coal exports to Japan rose only a miniscule 3 percent in 1981 after falling 12 percent in 1980. Yet, Japan's imports of coal from the world as a whole rose 45 percent in that two year period. The U.S. lost out because we had neglected the rail, port and other facilities needed to increase our export capacity. Yet the budget cuts of the last two years have cut rail and port development even further.

Despite this massive evidence to the contrary, we still hear the claim that Japan's closed market is behind our poor export picture, just as we were told only a year ago that if Japan's auto exports were only held back our own industry could recover. I still await some concrete projections on the effect on our trade picture of a total opening of the Japanese market.

I would suggest that a closer look at the arguments behind the "closed market" thesis suggests that a different motivation than protecting American industry lies behind the new focus on "opening the Japanese markets" and the demand that Japan "fundamentally change its business structure." I suggest this is a continuation of the same commitment to a post-industrial, services economy. Perhaps this is why, as we shall discuss below, Ambassador Brock, Secretary Baldrige and others have suggested that services, rather than hard commodity trade, would be the major beneficiary of any reciprocity legislation.

It is clear from Commerce Department reports to this Congress on steel, auto and other industries, e.g. the auto report of December 1981, that this administration, like the last, views "overcapacity" as the major problem of our industries. It is administration policy to reduce our steel capacity. The auto report explicitly states that sales, employment and profit levels of peak year 1978 will not return to the auto industry even with economic recovery and Japanese export restraint. Paul Volcker told savings bankers that the 1980s was "not a decade for housing" and administration officials have echoed Volcker's comments that Americans must "lower their living standards" to fight inflation.

Japan, however, has a different perspective. Japan's business structure and the business-government relationship is set up to promote industry. Japanese officials look aghast at a U.S. policy that has made MacDonald's instead of General Motors our nation's largest private employer. It is this Japanese structure -- which Japan learned following the 1868 Meiji Restoration from American economists, such as the writings of Alexander Hamilton and the personal tutelage of U.S. economists like Henry Carey and Peshine Smith who were advisers to Abraham Lincoln -- that Olmer and others have said must be dismantled.

What is this business structure, and to what extent is it, as charged, replete with import barriers? For one, Japanese business and government cooperate to insure that there is abundant cheap credit available for investment. Tokyo would never let the prime rate go to 20 percent, even with a budget deficit proportionally mugh higher than ours. This abundant, cheap credit lies at the heart of the Japanese economic miracle. For example, look at the difference in the investment practice of Japanese steel firms versus those in the U.S. Again and again, Japanese firms have scrapped entire mills no older than 15 years, in order to build entirely new, more efficient mills. As a result, they can make steel with up to 30 percent less coal, and 30 percent less iron ore. Labor productivity has soared to above American levels. And, far from financially wrecking the firms through ignoring of "sunk costs", this commitment to technological innovation not only provided enough profits to cover the new mill, but also to cover any remaining amortization on the scrapped mills.

In contrast, our firms -- even before they diversified into real estate and mergers -- simply put new technological bandaids on often decades old mills. This meant both higher operating costs, and, very significantly, meant that American firms had to spend more for every increase of tonnage capacity than the Japanese. At present, the Japnese are moving on to speciality steel while tranferring basic steel capacity, in part, to other countries, e.g. Nippon Steel's aid to the building of Korea's Pohang Steel Works.

It is often said, Japan can afford cheap credit because its savings rate is higher. However, Japan's savings rate does not result from cultural differences. Instead, it is a rather recent phenomenon that results from Japan's government granting tax exemptions to deposits that are sufficiently high so that approximately 57 percent of all personal savings in Japan is tax exempt.

Cheap credit is not the only part of the Japanese system. At the heart of the Japanese economic planning is a commitment to innovative industrial technology. Government and industry and labor, through the Industrial Structure Council of the Ministry of International Trade and Industry, target new "frontier industries", often with a 10, 20, or even 30 year horizon. In the 1950s, when Japan was beginning conversion from coal to oil, Tokyo was already planning and aiding the shift to the higher technology of nuclear power. Business and goverment planned a succession of ever higher technological levels, both domestically and for export: from textiles and toys in the 1950s; to steel; to cars and machinery; to capital goods and computers in the 1980s; to industrial robots and fusion power in the 1990s.

Indeed, Tokyo does aid such new frontier industries, through guidance, through cheap credit (provided mostly through the banking system, not government loans) through aid to Research and Development. And part of this aid is import barriers. For example, while building up the computer industry, Tokyo took care that unregulated imports of American computers did not make it impossible for Japan to develop its own industry. The result is that Japan is the only major country which uses a majority of domestic, rather than American, computers.

This protection of infant industry is a principle used by America in its past and approved by GATT for developing countries now. It is true that many of the import barriers that may have been appropriate in the past are no longer so. They should be removed. A couple months ago -- unfortunately not until outside pressure was applied -- Tokyo removed some of the most inappropriate, e.g. non-acceptance of international inspection standards, onerous language requirements on imports, etc.

Others of the import barriers in Japan are perhaps economically irrational, yet the result of important domestic political factors such as protecting a certain sector of the population. This is particularly true in the agricultural sector, where the price of Japanese steak is notorious. However, the rationale is not unlike that behind the U.S. administration's decision a few days ago to stiffen the quotas on sugar imports in order to raise the domestic price.

However, it is a far cry from negotiating the removal of inappropriate import barriers to calling for the dismantling of a Japanaese business structure that has produced remarkable achievements in the realm of the real economy: in productivity increases, in investment ratios, overall economic growth, rising living standards, technological progress. The system Japan uses is one they learned from us in the 19th century, a system that was known by our forefathers as "the American system."

Rather than call upon Japan to dismantle its system, I would suggest that we might re-import our own way of doing things. Let our country promote industry through cheap credit, aid to

R&D, targetting and promoting of productivity-enhancing frontier industries like nuclear power, industrial robots, etc.

Instead, we continue to pursue a policy aimed at promoting a post-industrial era. Unlike Japan where electronics is used to promote heavy industry, e.g. auto robotization or continuous casting of steel, too often in the United States, electronics-computerization is seen as a replacement for heavy industry.

If we continue to promote a post-industrial policy and Japan promotes an industrial policy, the result is not difficult to discern: within 10 years , Japan will surpass the United States in per capita national product and within another ten years may surpass us in absolute national product. The political ramifications of that should be obvious.

Lionel Olmer pointed to this in his November 3, 1981 testimony to the House Ways and Means Committee when he told them that, "Technological leadership, and economic leadership generally, can translate into political, diplomatic and military leadership... As our technological lead diminishes, our political influence is reduced...Technological leadership is also a key to our national security."

I suggest that this issue,-- of relative economic and political power rather than fair access to Japan's market -- lies at the heart of the calls for Japan to dismantle its current business structure. We cannot continue our post-industrial policy without adverse political effects, unless we can also get the Japanese to do the same. This is why, in my view, much of the arguments used in this "trade dispute" have lately come to focus much more on services and investment rather than trade in goods. This is why, in my view, the administration has made it a major focus in almost every recent public speech on U.S.-Japan economic relations, that Japan's government should, in the words of Lionel Olmer "encourage foreign aquisition of Japanese companies." Presumably, the same multinationals in the United States who diversified out of industry should be allowed to buyup Japan's corporations to apply the same shift.

Why cannot the U.S. simply abandon the post-industrial policy, use the Japanese methods to buildup our own industry, and then in an atmosphere of growth settle what would then become manageable trade frictions? I see no reason why not. I suggest the members of this Committee ask themselves the same question.

The National Democratic Policy Committee opposes the proposed reciprocity legislation because we believe it will not help solve what we believe to be very serious problems in our trading picture and in our economy. Rather, we believe, as do so many of our allies and many of our business sectors, that this legislation would help to touch off trade war.

On the other hand, the National Democratic Policy Committee believes there is a package of concrete measures that can be taken to revive both our trade and our economy generally. Our approach is that positive measures must be taken to revive world trade as a whole, and our own national economy, which is one of the main engines of world trade.

1. Lower the interest rates -- lower interest rates will not alone solve all of our problems, but little else can be done unless interest rates are returned to a normal 3-5 percent range. The fact that anyone could regard 10-12 percent as a goal shows how "brainwashed" we have become.

   Unless interest rates are brought below the prospective return on productive investment, capital will continue to shift away from productive investment into mere paper investment. The U.S. and world economy will sink deeper and deeper into recession, and probably depression.

   It is a lie that high interest rates have lowered inflation. By artificially cutting the ground out from under industrial demand, Volcker has simply made it impossible for industry to pass along costs, as in previous depressions when prices fell. The merest hint of recovery would create a new inflationary outburst even worse than what we have already seen, precisely because high rates have lowered investment and productivity.

2. Vote down the petroleum tax -- just at the point when our industry

and our potential auto consumers get some relief from high oil prices, it is proposed to out-OPEC OPEC in raising prices again through a tax of $4/barrel. This is a recipe for depression.

3. Restore the Export-Import Bank cuts and infrastructure cuts. U.S. officials have admitted that our firms have lost billions in foreign orders because of cutbacks in EXIM funds and the raising of interest rates. Yet, under the cloak of an ideological opposition to "subsidies" the administration policy is to raise EXIM rates higher and cut funding further. Port, rail and other infrasstructure cuts which hurt our physical trade capacity and overall industrial capacity must be restored.

4. Promote and finance international projects to expand world production and trade -- The NDPC has proposed that the U.S. gear up to export more than 100 nuclear reactors per year. The energy demand is there, particularly in the developing countries. The only obstacles are political and financial. Energy bottlenecks are perhaps the greatest barrier to Third World development. Energy for agricultural improvement is absent. Factoties operate often at 50 percent of capacity because of endemic power blackouts. The increase in productivity gained simply through sufficient energy would surely produce enough wealth, not only to pay back to credits extended to finance export of the nuclear plants, but also create new demand for further advanced country exports. The U.S. would

gain not only immediately from original sale of the reactors and the stimulus that would give to our economy, but also from the new demand that would result at the energy came on line.

The nuclear case is typical of a wide number of project that would have this kind of payback potential. Large portions of the developing sector which now suffer famine in fact enjoy very rich soil. They require only the modern tools of irrigation, mechanization and fertilizer to develop this potential. These areas include the African Sahel, the South American Rio De La Plata region, the Indian Ganges-Brahmaputra area. Massive water projects, requiring American equipment, are needed, but the returns are tremendous. Credit for these projects would be paid back from the results of the projects.

5. Investigate the Nakajima Plan -- Masaki Nakajima of the Mitsubishi Research Institute of Japan has proposed a $25 billion per year, 20-year plan called a Global Infrastructure Fund to finance projects such as those mentioned above. Nakajima proposes the GIF be funded by capital from the U.S., Japan and BRD of $5 billion each, plus funds from OPEC and other industrial nations. While the NDPC does not endorse all of the specific projects listed by Nakajima, we believe his proposal should be discussed by U.S. agencies and at the upcoming Versailles

summit this summer.

6. International monetary reform, including remonetization of gold -- NDPC Advisory Board Chairman Lyndon LaRouche, Jr. has repeatedly pointed out that the above proposals will not succeed unless the international monetary system is reformed to break the stranglehold of the Eurocurrency and other offshore money markets over the real, productive economy. Such reform must include the remonetization of gold -- not a return to the deflationary pre-War gold exchange standard, but a use of gold to back up international bonds at no more than 2-4 percent interest rates. Gold should be remonetized at something around $500 per ounce. In place of the moribund International Monetary Fund, an international rediscount facility working through national central banks and the private banking system, could be used to support gold-backed international development bonds to finance the kind of longterm international development projects proposed in points 4 and 5 above.

The protection for the dollar provided by a reformed international monetary system would then allow expansion of U.S. government lending to finance useful infrastructure and industrial projects in our own country without fear of undermining the dollar's value.

In all cases, the use of such cheap credit should be strictly reserved to productive industrial, infrastructural, agricultural or research and development purposes, not for every new casino, shopping mall or video game factory that the post-industrialists now seem to advocate. These loans should be made through the private banking system, except for such large domestic projects as the North American Water and Power Alliance (NAWAPA) water project for the American West.

If this package of policies were to be adopted by the U.S. government in cooperation with our allies, recovery of the world and domestic economy would proceed rather quickly, the longrun structural basis of inflation would be steadily removed, and American exports would zoom as would world trade as a whole. It might be mentioned in passing that these proposals embody in the international sphere precisely the kind of thinking that has made Japan so successful in its domestic sphere.

In the context of rising world trade, we believe it certain that we could then resolve our remaining questions of access to the Japanese market, or other outstanding trade issues with Japan or other countries, in a manageable manner.

The Business Roundtable

Clifton C. Garvin Jr.
Chairman
Theodore F. Brophy
Cochairmen
James H. Evans
Cochairman
Walter B. Wriston
Cochairman

NEW YORK
200 Park Avenue
New York, New York 10166
(212) 682-6370

G. WALLACE BATES
President

JAMES KEOGH
Executive Director—Public Information

RICHARD F. KIBBEN
Executive Director—Construction

WASHINGTON
1828 L Street, N.W.
Washington, D.C. 20036
(202) 872-1260

JOHN POST
Executive Director

Business Roundtable Task Force on International Trade and Investment: Legislative Proposals

May 4, 1982

POLICY COMMITTEE:

- Clifton C. Garvin, Jr., *Chairman* • Theodore F. Brophy, *Cochairman* • James H. Evans, *Cochairman* • Walter B. Wriston, *Cochairman*
- Robert H. B. Baldwin • Robert A. Beck • W. Michael Blumenthal • John F. Bookout • Charles L. Brown • James E. Burke • Philip Caldwell
- Robert F. Dee • John H. Filer • Richard L. Gelb • W. H. Krome George • Philip M. Hawley • Edward L. Hennessy, Jr. • Edward G. Jefferson
- Donald M. Kendall • Robert D. Kilpatrick • Robert H. Malott • Archie R. McCardell • Ruben F. Mettler • Lee L. Morgan • John R. Opel
- Paul F. Oreffice • Edmund T. Pratt, Jr. • Lewis T. Preston • John M. Richman • James D. Robinson, III • David M. Roderick
- Donald V. Seibert • Richard R. Shinn • George P. Shultz • Andrew C. Sigler • Roger B. Smith • Sherwood H. Smith • Edson W. Spencer
- J. Paul Sticht • Rawleigh Warner, Jr. • John F. Welch, Jr. • Richard D. Wood • **Honorary Members:** Roger M. Blough • John D. Harper
- Reginald H. Jones • Thomas A. Murphy • David Packard • Irving S. Shapiro

I. PROPOSED AMENDMENTS TO SECTION 301 OF THE TRADE ACT OF 1974.

A. Issue - Should a new cause of action be created which would be based on denial of "substantially equivalent commercial opportunities" or "reciprocal market access"?

BR Position - There is no need to create such a cause of action. It may, however, be appropriate to indicate either in the findings and purposes of legislation or in any accompanying committee reports that these concepts are among the factors to be considered in assessing whether foreign countries are fulfilling their trade commitments. By contrast, the concept of "denial of market access" may, in some form, be an appropriate basis for a Section 301 cause of action. Such a provision would emphasize the growing concern in the United States over foreign restrictions on trade and investment.

Rationale - "Substantially equivalent market access" or "reciprocal market access" should not, for several reasons, become a separate cause of action in the context of an enforcement statute.

First, and most significant, a cause of action based on these concepts would restrict rather than expand the scope of Section 301. As presently drafted, Section 301 requires only an allegation that a foreign action "(A) is inconsistent with the provisions of, or otherwise denies benefits to the United States under, any trade agreement, or (B) is unjustifiable, unreasonable, or discriminatory and burdens or restricts United States commerce." If a reciprocity element is added, the United States would also be required to demonstrate that it offers reciprocal market access. This may not always be the case. Thus, if the United States tries to break into a particular market sector in which it has imposed import or investment restrictions, the concept could be used as an affirmative defense by a foreign government.

Second, a new cause of action based on "substantially equivalent commercial opportunities" would be superfluous. The problem of market access is already covered adequately in Section 301. In those areas covered by multilateral or bilateral agreements, the President has authority under Section 301(a)(1) "to enforce the rights of the United States under any trade agreement," and under Section 301(a)(2)(A) to respond to any action which is "inconsistent with the provisions of, or otherwise denies benefits to the United States under, any trade agreement." In those areas not covered by multilateral or bilateral agreements, denial of competitive opportunities is actionable under Section 301(a)(2)(B) if it is "unjustifiable, unreasonable, or discriminatory and burdens or restricts United States commerce" 19 U.S.C. § 2411.

Finally, reciprocity is essentially a negotiating concept, used as a means of assessing the benefits of multilateral or bilateral agreements. See, e.g., Sections 104 and 126 of the Trade Act of 1974 (19 U.S.C. § 2114(a) and § 2136(c)). Reciprocity is a dangerous concept on which to base a cause of action. It could lead to unilateral denial of access to our market - which may, in turn, trigger retaliatory action.

B. Issue - Should the President be given additional remedial authority under Section 301, and if so, under what circumstance should it be exercised?

BR Position - The primary remedy under Section 301 should be either bilateral or multilateral negotiations.

- As explained more fully below in Sections III.B. and IV.A., Section 301 should be expanded to give the President explicit authority with respect to both service sector trade and investment.
- In the event negotiations fail in those areas covered by GATT or other international trade agreements, remedies should take into account the obligations of the United States under the applicable international agreement.
- In the event negotiations fail in areas not covered by the GATT or other international agreements, the President should have authority to impose fees or restrictions on foreign investment. The President already has authority under Section 301(b)(2) to impose duties or other import restrictions on products and to impose fees or restrictions on services.
- The President should have the authority (1) to take action on a nondiscriminatory basis or solely against the products, services or investment of the foreign country involved and

(2) to take action affecting products, services or investments other than those (or their equivalents) involved in the Section 301 investigation, if actions with respect to such products, services or investments (or their equivalents) would be ineffective or inappropriate.

- In the event the President decides to exercise such "cross-over" authority, he must afford an opportunity to be heard to both foreign and domestic interests affected by such a decision.

- In deciding to take action under Section 301, the President should be required to take into account the impact of the action on the national economy and the international economic interests of the United States. In addition, the President should be required to conduct a review (on not less than a biennial basis) of each action taken under Section 301 in order to determine its effectiveness and whether continuation of such action is in the national interest.

- The President should be required to rescind an action taken by him under Section 301 if (1) he determines that continuation of the action is not in the national interest, or (2) the offending act, policy, or practice is eliminated by the foreign country.

Rationale - We must be careful not to undermine our international obligations under the GATT and other international agreements or to trigger escalating retaliation. Negotiation is the most effective remedy for resolving problems and avoiding foreign retaliation. However, in order for the President to have negotiating leverage, he must have authority to take affirmative action in the event negotiations fail. Imposition of restrictions on foreign imports, services or investment is always risky in terms of provoking escalating retaliation. The risks are even greater in the event there is a need to impose restrictions on products, services or investments not involved in the original action under Section 301. Such "cross-over" authority is, however, necessary in order to provide the President with a wide range of responses in order to enhance his negotiating leverage. Because of these risks, the President's authority should be carefully circumscribed in order to protect the national interest as well as the private parties affected.

C. Issue - Should the Executive Branch be required to undertake studies or submit reports which (1) identify foreign barriers and (2) recommend actions to obtain their elimination?

BR Position - BR supports a program to identify foreign barriers to market access. Such a program should provide for private sector input and a procedure for assuring confidentiality of information. BR does not support disclosure of actions to deal with removal of trade barriers.

Rationale - The business community and the Executive Branch need more guidance and encouragement to initiate investigations under existing U.S. trade laws. An inventory of barriers will focus the attention of the Executive Branch and the business community on the need to take action to remove foreign barriers. However, a public report on what actions are planned could reduce negotiating flexibility and undermine chances for success.

II. NEGOTIATING AUTHORITY.

A. Issue - Should the President be given specific authority to negotiate bilateral or multilateral agreements with respect to foreign direct investment, services and high technology?

BR Position - BR supports legislation which would give the President specific negotiating authority in these areas. Any such legislation should -

- Provide, where appropriate, for sectoral negotiations, in accordance with Section 104 of the Trade Act of 1974.
- Provide that, while multilateral agreements may be preferable, bilateral agreements are, as recognized in Section 105 of the Trade Act of 1974, entirely appropriate.
- Provide that where negotiations result in a new reduction of barriers, the United States may apply conditional Most-Favored-Nation status under the ground rules set out in Section 126 of the Trade Act of 1974.

Rationale - Currently there are few international agreements in any of these areas. A statutory provision which would specifically authorize the

President to negotiate agreements in these areas would both clarify Presidential authority and encourage such activity.

III. LEGISLATION NEEDED TO FACILITATE NEGOTIATIONS WITH RESPECT TO SERVICES.

A. Issue - Is there a need to establish a services industry development program in the Department of Commerce?

BR Position - There is a need for a program which would develop the data needed for formulating services industry negotiating strategies and objectives. There is also a need to allocate a fair share of existing export promotion programs, such as Export-Import Bank financing, to service industries.

Rationale - Preparation of negotiating positions and objectives requires a systematic analysis of foreign barriers as well as federal and state regulation of the service industries.

B. Issue - Should Section 301 be amended to provide more explicitly that service sector trade is covered?

BR Position - Section 301 appears to already cover service sector trade. In order to clear-up any ambiguity, however, Section 301 should be amended to clarify that coverage.

Rationale - The President should have unambiguous authority to use Section 301 to remove unfair trade practices in service sector trade.

C. Issue - How is coordination with state agencies best achieved so as to ensure that negotiated agreements will receive necessary ratification?

BR Position - Current legislative proposals which would require the U.S.T.R. to consult regularly with representatives of state governments are not sufficient in that this mechanism would not adequately ensure that any negotiated agreements would be approved by the states. Consideration should be given to the establishment of an intergovernmental task force which would work with the states to develop appropriate procedures to ensure expedited ratification of trade agreements in those areas subject to state regulation.

Rationale - Procedures limited to consultation with the states prior to and during negotiations will not provide adequate assurances to our trading partners that negotiated agreements will receive the necessary domestic ratification. Such lack of assurance will make our trading partners reluctant to go through the strenuous effort of negotiating agreements with us. An intergovernmental task force which would work with the states to establish ratification procedures prior to negotiations is the most effective vehicle for ensuring that trade agreements will be expeditiously implemented.

D. Issue - Do we need additional tools by which to monitor and regulate foreign services - i.e., registration procedures?

BR Position - This proposal is inappropriate.

Rationale - A registration requirement is a burdensome one. This requirement could invite retaliation by trading partners or, at a minimum, provide an excuse for restrictions on U.S. firms abroad. In addition, many foreign service sectors are already regulated by the states or by federal agencies. This new registration proposal may be duplicative of these procedures.

IV. LEGISLATION NEEDED TO FACILITATE NEGOTIATIONS WITH RESPECT TO INVESTMENTS.

A. Issue - Should Section 301 be amended to explicitly provide the President authority with respect to investment?

BR Position - Section 301 should be so amended.

Rationale - As in the case of services, there are few international agreements to protect the interests of U.S. investors abroad. An unambiguous extension of the President's Section 301 authority to cover investment with respect to unfair practices is needed to provide the President with negotiating leverage.

B. Issue - How is coordination with state governments best achieved so as to ensure that negotiated agreements will receive necessary ratification?

BR Position - An intergovernmental task force should be established to develop mechanisms to harmonize state investment incentives and other relevant programs with international agreements.

Rationale - Again, an intergovernmental task force would provide the best vehicle for developing procedures which will ensure that investment agreements are expeditiously implemented.

V. ROLE OF INDEPENDENT AGENCIES.

A. Issue - Should independent agencies be authorized to consider foreign practices in their licensing procedures and to restrict foreign investment, services, or imports on the basis of denial of equal access?

BR Position - Such broad and unguarded authority should not be entrusted to independent agencies.

Rationale - Where some response to foreign business is needed, it should be the President, not the independent agencies, who takes such action. This approach was endorsed in the legislative history accompanying the Trade Act of 1974. A particular agency will not be cognizant of all the foreign policy and national security implications of trade actions. A unilateral decision by an independent agency to offset foreign barriers in one sector could trigger foreign retaliation in a sector more important to the economic interest of the United States as a whole or could jeopardize on-going negotiations.

VI. SPECIAL ANTIDUMPING AND COUNTERVAILING DUTY TREATMENT.

A. Issue - Do we need to establish a new cause of action based on subsidization or unfair pricing with regard to services or high technology products?

BR Position - These proposals are inappropriate.

Rationale - Concepts of antidumping and countervailing duties applicable to tangible goods may not be easily transferable to services. For most services there are not reliable means to measure or establish that an unfair trade practice has occurred. High technology products are already covered by existing antidumping and countervailing duty laws. No sector should be given any special treatment under the antidumping or countervailing duty laws. If these laws are not working, we should overhaul them - not alter them piecemeal.

Introduction

The international economic policies of the United States historically have sought to expand trade and investment. They have been generally successful.

International institutions, like the General Agreement on Tariffs and Trade (GATT), with its emphasis on multilateral, non-discriminatory reduction of trade barriers, seek mutually acceptable rules and are key elements of U.S. policy. GATT was designed to prevent a recurrence of the destructive, retaliatory trade policies of the 1930's. The commitment to a multilateral system of negotiations has led to reduced trade barriers which, in turn, allowed an unprecedented expansion of trade and improved U.S. and world prosperity.

But serious questions are being raised concerning the effectiveness of traditional U.S. trade and investment policies in a period of changing economic realities. The international trading system is being increasingly challenged. The trend of the last two decades for governments to try to handle a variety of domestic economic problems through unilateral restrictions on imports and to stimulate exports through government subsidies has grown more pronounced. Such government interventions are distorting both trade and investment patterns.

The very success of GATT in promoting reduction of tariffs, the traditional protectionist measure, has spawned an even more complex and troublesome set of obstacles in the form of non-tariff barriers and subsidies. They are sometimes hard to identify, their measurement is elusive and negotiations aimed at their reduction or elimination are difficult.

The United States has identified many such barriers in our international economic relationships. Canada's FIRA and the failure of Japan to open its market to highly competitive U.S. products exemplify the problems causing frustration in the United States. They have cost our economy business and jobs. Justifiably, they have raised the ire of the American public, which has demanded that its government do something to offset or combat the trend.

Presently, a prevailing response in the United States to these serious issues has been to embrace the concept of "reciprocity" as a means of reducing foreign trade and investment barriers and thereby improve our access to foreign markets. Reduction of trade barriers on a reciprocal basis is not a new concept for U.S. foreign economic policy. But as articulated by some in recent speeches and legislative proposals, the concept of reciprocity in 1982 differs in definition, approach and application from our traditional understanding of reciprocity.

The Business Roundtable Task Force on International Trade and Investment is concerned that an improper use of reciprocity could worsen, instead of improve, our economic vitality. If misapplied, the concept has the potential of further undermining an already vulnerable multilateral trading system by triggering retaliation. As happened in the 1930's, the short-term advantages which may accrue from the threat and use of retaliatory measures will serve only to destabilize international trade and investment.

At this critical time, the Task Force urges the United States to assert the political will and leadership needed to preserve and strengthen the multilateral trading system. This includes reevaluation of the adequacy of existing U.S. trade laws which give the President the ability to respond to unjustifiable, unreasonable and discriminatory foreign trade and investment practices. When they are inadequate, we should correct the deficiency. But we should not allow solutions to bilateral problems, which deserve serious attention, to weaken the foundations on which our success as a trading nation have been built. That is a potential problem in the "reciprocity" debate, as we see it unfolding.

It is within this context that this statement undertakes to formulate a set of general principles upon which the policy debate about foreign barriers to U.S. exports and investment should proceed. These principles reflect a clarification of the meaning of "reciprocity" in its historical context and the problems inherent in the application of reciprocity to non-tariff barriers.

General Principles.

The concept of reciprocity has become politically popular. The policy is aggressive and is directed toward foreign targets, particularly the Japanese. While its stated purpose is to compel the opening of foreign markets, many view it as a means to protect the U.S. market against foreign competition.

But reciprocity is a high risk policy. Its application in a retaliatory manner could well backfire and close-off foreign markets which are now open to our most competitive industries. Thus it is incumbent on U.S. policymakers to assure that any new legislation which invokes the concept of reciprocity is a step forward and not a step backward toward protectionism.

We do not mean to imply that no new legislation is needed to deal with the problems we confront. Rather, any legislative response must provide for flexibility, recognize our international obligations, take into account our commitment to strengthening and broadening the GATT, and truly promote the expansion of international markets and not their contraction.

The Business Roundtable Task Force on International Trade and Investment believes the following principles must guide the debate about enactment of reciprocity legislation.

First, a change in U.S. trade laws should not be effected unless there is convincing evidence of a need for such change. Bilateral balance of payments deficits do not conclusively establish such a need. Our trade deficit with Japan is unacceptable, but it results, at least in part, from the present undervaluation of the yen and overvaluation of the dollar. At the same time the United States is reflecting a trade imbalance with Japan, we enjoy a substantial trade surplus with the Common Market and LDCs.

We need also to evaluate whether our problem is political rather than procedural. There are a number of areas where it is clear that Japan has violated its GATT obligations. Yet, the U.S. has generally chosen to resolve these problems through bilateral consultations and negotiations rather than to enforce our rights through the consultation and dispute settlement mechanisms of the GATT. Before we pursue new legislative remedies, we must be sure we are making appropriate use of those already at our disposal.

At least some of our problems are of our own making. Existing laws and practices self-impose barriers to U.S. exports and foreign investment. We have not done enough legislatively to promote U.S. foreign trade. Positive legislation which removes export disincentives and provides useful export incentives may be more effective in enhancing our international reputation and competitiveness than new punitive reciprocity legislation.

Second, new legislation should authorize only those unilateral actions which are consistent with our international obligations under the GATT and other agreements. We should not enact legislation that violates the GATT. The strength of the multilateral trading system lies in GATT's consultation and dispute settlement procedures. These procedures permit countries that feel damaged by the practices of others to bring complaints with the expectation that something will happen: a change in the practice, a dismissal of the complaint, a compromise solution or permission for the complainant to retaliate unilaterally if its case is valid and the offender will not change the illegal practice. The Tokyo Round improved those procedures substantially and they deserve to be tested. Legislation which would substitute unilateral action for dispute resolution procedures presently available under the GATT is premature.

Third, in those areas which are not adequately covered by existing U.S. trade laws, new legislation must promote efforts to obtain multilateral solutions and support United States foreign investment and exports. Investment and services are not presently covered by GATT and are not covered adequately by existing U.S. trade laws. We need new laws which encourage bilateral negotiations with countries imposing barriers to U.S. investment and exports, and, at the same time, enable us to work within the GATT or other multilateral institutions to expand their coverage and effectiveness. On the other hand, new laws enacted in frustration as a quick unilateral response to particular foreign restrictions on U.S. investment and service exports may be more harmful than helpful.

Foreign investment and export of services are two areas in which the United States has a decided comparative advantage, in spite of the existence of foreign barriers. We do not want new reciprocity legislation to backfire and add to these restrictions. Carefully defined authority in these areas may help offset foreign barriers to U.S. investment and services exports. Broad and unguided authority may trigger foreign retaliation against the very sectors where the United States is most competitive and therefore most vulnerable.

Fourth, new legislation should not implement restrictive and retaliatory notions of reciprocity which will undermine reciprocity as a forward-looking approach to opening foreign markets through negotiation. Unlimited authority to take unilateral action which retroactively denies access to the U.S. market is contrary to reciprocity's forward-looking emphasis. Any new legislation must be consistent with our traditional notion and application of reciprocity.

In a related matter, because of misuse and misapplication, the words "reciprocal" and "reciprocity" have come to be identified, rightly or wrongly, with retaliation and protectionism and should perhaps be banished from the debate. It is unfortunate that words which reflect decades of constructive and forward-looking U.S. trade policies have fallen into disrepute. Yet, this development may be a constructive catalyst. It forces us to define more precisely what the concept means and how it should be applied. This will help our trading partners understand more clearly the goals we are striving for.

Several legislative proposals use the phrase "substantially equivalent commercial opportunities" in describing equitable market access. This is a good starting point. The phrase is similar to that used in Sections 104 and 126 of the Trade Act of 1974 and broadly defines a goal to be achieved in the overall trading relationship between two countries given the special economic circumstances of each. It also recognizes the pitfalls of performance-oriented tests, such as focusing on bilateral balances of trade, or of trying to achieve exact equal treatment on a sector-by-sector or product-by-product basis.

Fifth, trade legislation should not be enforced by independent federal agencies without provision for adequate supervision and control by the President. Independent agencies may, under certain circumstances, have a constructive role in assessing the impact of foreign trade and investment barriers on matters within their regulatory jurisdiction. However, these agencies should not be given authority or required to develop and implement U.S. foreign trade and investment policies independently.

A particular agency may have the best understanding of the domestic business it regulates, but it will not have a broad understanding of U.S. foreign economic policy. It will not be cognizant of all the foreign policy and national security implications of trade actions. Such institutional deficiencies could lead to unjustified decisions or actions which violate U.S. international obligations and undermine ongoing bilateral or multilateral negotiations.

Independent agencies also are limited in their scope of authority to specific sectors. A unilateral decision by an independent agency to offset foreign barriers in one sector could trigger foreign retaliation in a sector more important to the economic interest of the United States as a whole. Mirror image legislation which would require a particular agency to take retaliatory action in response to a foreign trade or investment restriction compounds the problem by precluding consideration of other factors which necessarily bear upon any trade or investment decision. Any legislation must place trade decisions clearly in the control of the President, the State Department and the relevant trade agencies (the United States Trade Representative and the Department of Commerce), to avoid the danger of serving narrow interests at the expense of broader ones.

Reciprocity: Its Historical Perspective.

Reciprocity is not a new principle of U.S. foreign economic policy. Reduction of trade barriers on a reciprocal basis has been a basic tenet of our policy since the Reciprocal Trade Agreements Act of 1934.[1] In the post-war period, the GATT, with its express provision in Article XXVIII for negotiations on a "reciprocal and mutually advantageous basis," has provided the framework for the major trading nations to make comparable reductions in trade barriers multilaterally. Yet, a precise definition of reciprocity is nowhere to be found.

Similarly, the concept of reciprocity is well entrenched in U.S. trade law, but is not defined. Although the concept was the basis of the Reciprocal Trade Agreements Act of 1934, the term "reciprocity" is not used in that statute.

---

[1] 19 U.S.C. § 1351 *et seq*.

In drafting the Trade Expansion Act of 1962, Congress was apparently aware of the negotiating problems of trying to define reciprocity and avoided any explicit reference to the term. Instead, the Congress used the vague phrase "affording mutual trade benefits."[2]

In evaluating the Kennedy Round of negotiations, the U.S. Special Trade Representative articulated a more comprehensive, but still vague definition:

> [I]n the course of the negotiations, numerous other factors were considered in evaluating the balance of concessions - the height of duties, the characteristics of individual products, demand and supply elasticities, and the size and nature of markets, including the reduction in the disadvantage to U.S. exports achieved through reductions in the tariffs applied to the exports of the United States. . . .[3]

In the Trade Act of 1974, Congress attempted to refine the concept of reciprocity by calling for "competitive opportunities for United States exports to the developed countries of the world equivalent to the competitive opportunities afforded in U.S. markets to the importation of like or similar products. . . ."[4] In adopting this formulation of reciprocity, Congress clearly indicated it was not demanding strict equality of market access. The Senate Report noted that:

---

[2] 19 U.S.C. § 1801.

[3] U.S. Office of Special Representative for Trade Negotiations, "Report on United States Negotiations" (1967), Vol. 1, p. iii.

[4] 19 U.S.C. § 2114(a).

> The requirement for achieving equivalence of competitive opportunities within sectors does not require equal tariff and non-tariff barriers for each narrowly defined product within a sector, but overall equal competitive opportunities within a sector.[5]

Congress recognized the advantage of overall equivalence, as opposed to strict equality, is that it permits one country to lower its barriers on one product in return for another country lowering its barriers on a different product. Reciprocity is achieved in the sense that a better overall balance exists between trading partners.

In contrast, some present day advocates emphasize that reciprocity requires trade concessions to be made on a *quid pro quo* basis. This is contrary to the historical application of reciprocity as a forward-looking concept. The term reciprocity has traditionally been considered synonymous with "unconditional most-favored nation treatment" (MFN) -- an extension of privileges or a reduction of tariffs to one country must apply to all eligible countries. Conditional MFN, in contrast, provides MFN treatment to a country only so long as it meets its bilateral obligations.

The United States has generally favored unconditional MFN as a foundation of its trade policy. There have been exceptions to this approach -- notably, the disastrous experiment under the Smoot-Hawley Tariff Act of 1930 -- but the United States has found through experience that the unconditional MFN approach provides the soundest basis for meaningful trade negotiations. This approach is codified in the Reciprocal Trade Agreements Act of 1934 and the Trade Expansion Act of 1962.

---

[5] S.Rep. No. 93-1298, 93rd Cong., 2d Sess., 79 (emphasis added).

Unconditional MFN became U.S. policy, because the United States found that conditional MFN, with its emphasis on bilateral special arrangements, created frictions and market disruptions and thus outweighed its usefulness as a device to end discrimination against U.S. products. The U.S. Tariff Commission's 1919 report on "Reciprocity and Commercial Treaties," noted the problem:

> [A] policy of special arrangements, such as the U.S. has followed in recent decades leads to troublesome complications. . . . When each country with which we negotiate is treated by itself, and separate arrangements are made with the expectation that they shall be applicable individually, claims are nonetheless made by other states with whom such arrangements have not been made. Concessions are asked; they are sometimes refused; counter concessions are proposed; reprisal and retaliation are suggested; unpleasant controversies and sometimes international friction result.

In the post-war period, the U.S. commitment to unconditional MFN was reinforced when, after its destructive flirtation with protectionism in the 1930's, the United States became a leading member of GATT. Under Article I of the GATT, all contracting parties agree to apply unconditional MFN treatment to one another.

Our unconditional MFN policy was modified to a limited extent in the Trade Act of 1974. The Act authorizes the

President, if necessary to restore equivalent competitive opportunities with respect to certain major industrial countries, to recommend to Congress "(1) legislation providing for the termination or denial of the benefits of concessions of trade agreements entered into under [the 1974 Act] . . . and (2) that any legislation necessary to carry out any trade agreements under [the 1974 Act] shall not apply to such country."[6]

The 1974 Act makes it clear, however, that the President is to use this authority only if a major industrial country has not made concessions under trade agreements which provide "substantially equivalent competitive opportunities for the commerce of the United States."[7] The authority is not punitive; it may be invoked only to refuse a particular country the benefit of new concessions we are prepared to grant to a third country under the 1974 Act, but not to serve the special interests of the United States or to threaten retroactive loss of access to U.S. markets.

Similarly, the United States implements the Government Procurement Code on a conditional MFN basis. Section 301 of the Trade Agreements Act of 1979 authorizes the President to extend benefits under the Code only to countries which provide "appropriate reciprocal competitive government procurement opportunities to United States products and suppliers".[8] Again, the statute is forward looking. It refuses to grant new concessions; it does not threaten to deny concessions previously granted; and it is based on a multilateral agreement as opposed to unilateral action outside of the GATT framework.

---

[6] 19 U.S.C. § 2136(c). It is important to note that in agreeing on this language the Congress specifically rejected a proposal to apply conditional MFN to "any trade agreement."

[7] 19 U.S.C.A. § 2136(b).

As is the case in U.S. trade law, GATT does not contain a precise definition of reciprocity. GATT Article XXVIII merely states that negotiations should be on a "reciprocal and mutually advantageous basis".

In GATT, reciprocity has been employed primarily in the area of tariff reductions. Originally, GATT negotiators tried to measure reciprocity in terms of "trade coverage". They determined the annual volume of imports to each country within the tariff classification at issue and attempted to achieve equal reductions of duties. This proved time-consuming and unworkable. No clear picture of reciprocity emerged since the method of measuring relative concessions ignored the depth of cuts and thus was subject to much dispute. Only when the sixth round of MTN negotiations (Kennedy Round) abandoned this methodology in favor of a simpler 50 percent across-the-board-tariff reduction were meaningful results achieved. Reciprocal concessions were achievable only when it was realized that exact reciprocity was unworkable.

The point of this analysis is that the concept of reciprocity -- under both U.S. law and GATT -- has traditionally been applied in a forward-looking manner for the purpose of opening up markets. It has not been used as a device by which to exact concessions on a quid pro quo basis or demand strict equality of market access.

---

[8] 19 U.S.C. § 2511(b)(1).

The variety of reciprocity now being advocated by some appears to veer sharply from what reciprocity has meant historically. Its thrust is more protectionist and retaliatory. The new reciprocity emphasizes unilateral enforcement, rather than bilateral or multilateral cooperation based on mutually acceptable rules.

The new reciprocity rests on the dual assumptions that (1) trade and investment opportunities offered by the United States to other countries have been greater than the opportunities we have been afforded, and (2) our enforcement tools are inadequate to correct the imbalance. Its focus appears to be on closing U.S. markets to any country which does not afford U.S. businesses exactly equal opportunities in particular market sectors, rather than on achieving equivalent trade concessions across a broad spectrum of products and sectors. The proposals promote conditional MFN treatment not as a means of assessing the performance of our trading partners under negotiated multilateral and bilateral agreements, but as a substitute for those agreements. In these respects, the new reciprocity means something vastly different from the reciprocity which has served as a cornerstone of American foreign trade policy in the past fifty years.

Problems in Applying Reciprocity to Non-Tariff Barriers.

Errors in Measurement: The Equality Straightjacket. U.S. Senator Robert Dole recently wrote that reciprocity "means that other countries should provide us with trade and investment opportunities equal not simply to what they afford their other most-favored trading partners but equal to what we afford them." The objective of open markets for U.S. goods, investments and services is laudable, but experience -- like the early GATT efforts to reduce tariffs -- has shown us that precise equal treatment is difficult, if not impossible, to attain.

These problems are multiplied today because we are dealing mostly with non-tariff barriers which are far more difficult to identify and quantify than tariff barriers. An insistence on exactly equal concessions will not work because the form, application and effect of non-tariff barriers are so varied. Moreover, an insistence on equal concessions may not be to our advantage. The United States, with its comparatively open markets, would enter negotiations with less to concede.

The U.S. policy should be flexible enough to allow it to vary its approach depending on the identity of the country with which it is negotiating. For example, the U.S. might be less insistent upon obtaining equal treatment from developing countries whose efforts to protect their infant industries may be justified, than from an industrialized trading partner whose non-tariff barriers are designed to obtain unjustified trade advantages.

In short, exact equal treatment may be too rigid a policy. It could prevent the United States from obtaining concessions it needs and force us to give concessions we do not want to give. Our goal should be to open markets and we should not put ourselves in a straightjacket which restricts our movement in that direction. Particularly, a straightjacket that defies measurement.

Reciprocity Is a Two-Way Street. The goal of reciprocity is to open markets, not to close them. Some proponents of reciprocity legislation assert that a greater threat of unilateral action by the United States will help achieve that goal.

That position carries risks which must not be minimized. First and foremost is the possibility of retaliation. Faced with unilateral action by the United States, our trading partners may take unilateral action of their own which would not necessarily be confined to the product or industry which is the subject of our action. In assessing the present situation, it must be kept in mind that the United States is a major net exporter of services (approximately $60 billion), agricultural goods (over $43 billion) and our foreign direct investment, about $213.5 billion, is triple that of foreign companies in the United States. We are not invulnerable.

Nor, as U.S. Trade Representative William Brock said in Davos, Switzerland last month, is the United States "completely pure". Our laws protect domestic chemical, textile and certain agricultural products, among others. If a restrictive and retaliatory concept of reciprocity finds its way into U.S. trade policy, we can expect our trading partners to act similarly. The process would be degenerative, and markets could contract while the international economic community seeks the lowest common denominator.

Reciprocity, if applied narrowly, could also interfere with U.S. laws and policies affecting business which, though operating as barriers to trade, promote legitimate public policy. For example, the Glass-Steagall Act prohibits any bank, whether U.S.- or foreign-owned, from underwriting securities in the United States. At the same time, the International Banking Act and Regulation K permit foreign branches of U.S. banks to underwrite securities abroad. This puts them on a comparable competitive footing with foreign competitors. Should we regard it as a legitimate manifestion of reciprocity for the Common Market to withdraw underwriting privileges from U.S. banks in Europe, unless the United States permits European banks to underwrite securities in the United States? The question, of course, is rhetorical and is posed only to point out that we cannot legitimately expect other countries to afford us the exact investment opportunities we afford them without appreciating that we are not always in a position to reciprocate.

Our Commitment to GATT. Commitment to the new reciprocity could lead to actions inconsistent with our GATT obligations. GATT Article I assures unconditional most-favored-nation treatment to all signatories. Legislation which would deny MFN treatment to a GATT signatory who refused to provide the United States particular trade concessions would violate that provision. It is not a satisfactory response to say simply that GATT is commonly violated.

The Task Force has urged the U.S. to redouble its efforts to strengthen the GATT. The GATT has inherent deficiencies. For example, Japan's refusal to permit self-certification of imported automobiles is clearly a non-tariff barrier of the most preclusive kind, but it accords with the GATT because it applies to all countries without discrimination.

Many trade barriers presently in force among GATT signatories, such as a number of the quotas maintained by Japan, do not accord with the GATT. Yet, the United States has not challenged those barriers under the GATT's consultation and dispute settlement procedures. We cannot accuse the GATT of not working if we have not tested its effectiveness as a political or legal instrument.

Enactment of legislation which could lead to a violation of the GATT by the United States will have a symbolic and practical impact. We must make sure that the laws we enact and the actions we take do not adversely affect U.S. foreign investments and exports, or preclude or chill efforts to work within the framework of the GATT and to extend it.

Mirror Image Legislation. Narrow legislation which would mirror restrictive trade practices imposed by other countries or which would authorize or require a particular federal agency to make a specific retaliatory response to such restrictive trade practices present special problems. By their nature they are sectoral and reflexive and deny the United States the flexibility of accepting trade restrictions in one sector in return for concessions in other sectors.

Second, mirror image legislation fails to take into consideration the problem of national treatment. U.S. laws affecting foreign investment in many areas are among the least restrictive, but in the areas of antitrust, securities and banking, to name three, this country's laws and regulations are much more stringent than those of many of our trading partners. We must recognize that we cannot expect the laws of other countries to parallel our own.

Third, laws which entrust enforcement of reciprocity principles to independent agencies lose sight of the fact that international trade policies do not always lend themselves to a sectoral or product-by-product approach and are often inseparable from foreign and national security policy.

A Concluding Comment.

American businessmen, American workers and the American public are angry. So are American policymakers. The anger is directed at those nations -- most importantly Japan -- that are identified as having erected barriers to trade and investment, while simultaneously flooding the United States and other countries with their goods.

The mood has a positive impact on the U.S. policymaking process because it has clearly prompted a spirited debate on the adequacy of U.S. trade laws and the multilateral economic system to deal with perceived inequities in our trading and investment relationships. Such attention to our trade and investment problems is long overdue, and the Business Roundtable welcomes it.

The Task Force recognizes that new legislation may be needed. To the extent it is, we urge its commitment to the general principles enunciated above. The Task Force is undertaking its own review and analysis of individual legislative proposals that have been made.

STATEMENT OF THE COMPUTER AND BUSINESS EQUIPMENT MANUFACTURERS ASSOCIATION

Before the

SUBCOMMITTEE ON INTERNATIONAL TRADE
of the
COMMITTEE ON FINANCE

May 6, 1982

INTRODUCTION

This statement is on behalf of the Computer and Business Equipment Manufacturers Association which represents 37 companies accounting for 85 percent of the sales volume of computers and business equipment produced in the United States. During 1981, CBEMA member companies had revenues in excess of $50 billion, employed 750,000 workers in 50 states, and had a trade surplus of $7 billion. Because the CBEMA companies rely so heavily on exports and foreign investment, we welcome this opportunity to comment on the various trade bills now pending before this Committee. Furthermore, we would like to compliment the Chairman of the Subcommmittee, Senator Danforth, for holding this series of hearings to permit a discussion of fundamental aspects of United States international trade policy.

A discussion of trade policy principles during this period of rapid economic change is useful. It permits us to review the past and to look into the future. It also requires all of us to assess the successes and failures of our trade policy, to articulate what the basic principles underlying that trade policy should be, and to identify those areas in which United States international trade policy must be adjusted to address the problems of the future.

Given the subject of this hearing, we believe it is essential to consider, if only briefly, the origins of modern United States international trade policy. For the past fifty years, the goal of our trade policy has been to expand open and nondiscriminatory world trade. Since enactment of the Reciprocal Trade Agreements Act of 1934, the fundamental principle underlying this policy has been most-favored-nation (MFN) treatment for imports into the United States and for United States exports to other countries. During the same period, an equally important corollary to the MFN principle has been national treatment for American goods and investment once they have gotten past a foreign country's borders and entered the foreign market place.

Since the General Agreement on Tariffs and Trade (GATT) came into existence in 1947, the United States has pursued its trade policy goal largely through multilateral and bilateral trade negotiations under the auspices of that institution. In these GATT negotiations, the United States has always sought and should continue to seek, concessions from other countries which are of comparable benefit to the concessions granted by the United States.

Under the GATT system, of course, trade concessions are generally granted on an MFN basis with the result that each GATT member country achieves benefits which are, on a global basis, comparable to the concessions it grants. In this sense, United States international trade policy has incorporated the concept of negotiated reciprocal benefits for many years and should continue to do so.

The international trading system, which was designed largely by the United States, and United States international trade policy since 1934 have resulted in enormous benefits, both for the United States and the world. These benefits have been achieved through progressive lowering of barriers to trade in goods and elimination of discriminatory practices which distort trade.

This approach to international trade policy has been remarkably successful. The statistics speak for themselves. United States international trade now accounts for almost 17 percent of our Gross National Product. Furthermore, it is has been estimated that one in six manufacturing jobs is attributable to manufacture for export and that one in three acres planted by U.S. farmers produce crops for export.

It is obvious that our trade policy has, generally speaking, served the interests of the United States well in the past. The question before us today is whether it will continue to promote the interests of the United States.

In the future, competition for world markets will intensify. Government intervention in the market place will increase inevitably creating new forms of barriers to trade and investment and discrimination. Furthermore, the United States will become even more dependent on exports and imports.

These changes in the world economy and in the importance of international trade to the United States are not speculative. They are realities, realities which are already having a significant impact on United States commerce.

United States trade policy must be based on a firm understanding of these new realities. It must aggressively seek elimination of new barriers and distortions to trade in goods, services, and information and to United States investment abroad.

It is emphatically our view that the best framework in which to carry out such a trade policy in the future is through negotiations within the existing international structure and existing U.S. international trade statutes. We hold this view because of the historical success of this approach for the United States. Furthermore, we are convinced that American industry can compete effectively on world markets if existing domestic and international rules are honored. Therefore, we are convinced that there is absolutely no reason to question the basic goal or the fundamental principles of United States international trade policy.

THE "NEW" RECIPROCITY?

We feel compelled to make this assertion because, recently, there has been much debate about the need for a fundamental change in United States international trade policy. The frustrations leading to this debate are real. Persistent trade deficits, lack of compliance with, or avoidance of, international trade rules, such as the GATT, and increased competition from both developed and developing countries are realities. These realities, however, do not prove that the United States international trade policy is not working. Nor do they prove that the international trading rules do not work. In our view, these realities require action within the traditional system. They do not require destruction of a system that has served our interests well.

Nonetheless, some people have suggested that United States trade policy should be based on what they conceive to be a new principle of retaliatory bilateral reciprocity. As members of the subcommittee know, this principle, taken to its extreme, would require that for every product imported into the United States from a given country there be one similar product exported to that country from the United States.

There appear to be two arguments used by the proponents of retaliatory bilateral reciprocity for moving from the MFN and national treatment principles to the "new" reciprocity as the basis for our trade policy. First, the historic procedure for eliminating trade barriers and discriminatory practices through GATT negotiations, the results of which are implemented on an MFN basis, will not work in the future. Second, existing international rules and United States laws do not adequately address the problems of the future.

With respect to the first argument, retaliatory bilateral reciprocity is not a new concept. We cannot forget history. Before the 1930's, the United States did pursue a trade policy based on retaliatory bilateral reciprocity. According to a 1919 report on "Reciprocity and Commercial Treaties" by the United States Tariff Commission the result was:

> "[A] policy of special arrangements [leading] ... to troublesome complications ... When each country with which we negotiate is treated by itself and separate arrangements are made with the expectation that they shall be applicable individually, claims are nonetheless made by other states with whom such arrangements have not been made. Concessions are asked; they are sometimes refused; counterconcessions are proposed; reprisal and retaliation are suggested; unpleasant controversies and sometimes international friction result."

The consequence was beggar-thy-neighbor trade policies which played a major role in making the 1929 Depression the most severe in world history.

There is no reason to believe that the results of a policy of retaliatory bilateral reciprocity would be any different in the future. Each country would seek special arrangements exclusively benefitting its trade. The result was, and would be, a dramatic increase in barriers and distortions resulting in a dramatic collapse of world trade.

There is considerable evidence that a trade policy based on reciprocity cannot work and will, in fact, injure the United States. There is also considerable evidence that a trade policy based on negotiations, multilateral trade rules, and the MFN and national treatment principles will achieve benefits for the United States.

THE NEED FOR CHANGES IN GATT

The second argument used by proponents of the "new" reciprocity is that existing international trade rules and United States statutes do not adequately address the problems of the future. Although we believe that certain limited changes to U.S. statutes and changes to the GATT rules are necessary to address the problems of the future, we do not believe that the adequacy, or lack thereof, of U.S. law or the GATT has any bearing on the appropriateness of MFN and national treatment as the basis for United States international trade policy.

With this in mind, we point out that it is obvious that existing international rules, such as the GATT or Treaties of Friendship, Commerce, and Navigation, do not adequately address certain problems. For example, barriers to international investment flows, to international information flows, and to international trade in services are not currently subject to any effective international discipline. These problems will become increasingly significant in the future. It is imperative that the United States make every effort to cure the inadequacies of the existing international system in this regard through negotiation of new rules at the earliest possible date. We strongly support the initiative of the Administration, and particularly of Ambassador Brock, in seeking to raise the problems of investment, information, and services at the GATT Ministerial meeting this November. It is imperative that the United States sustain this effort which will inevitably require several years of hard work and negotiation.

It is even more obvious that existing international rules must be enforced aggressively and effectively. We cannot conclude that the GATT system does not work until we and the other GATT members have made a genuine effort to make the system work. This effort must include aggressive use of dispute settlement procedures by the United States Government to assure compliance of other countries with the GATT rules. Finally, and most significantly, this effort must be effective. That is, our trade negotiators must consider the nature of the GATT system and the kinds of disputes which, realistically, can be resolved through that system.

On this point, it is important to remember that GATT is not a court. Nor is it a purely political institution. It is a system of rules requiring or prohibiting certain kinds of government behavior with procedures for resolving disputes under those rules.

In essence, the GATT is an institution which is designed to force negotiated resolution of international trade disputes within a framework of legal obligations. Disputes which relate to government laws, regulations, or policies and which present violations of the letter or spirit of GATT rules are clearly suitable for negotiated resolution within the framework of the GATT rules. It is this kind of dispute which the United States Government should pursue aggressively through GATT.

THE NEED FOR CHANGES IN U.S. LAW

Turning now to existing United States trade statutes, we believe that a primary issue is whether the President is using his current authority to take appropriate and effective actions in pursuit of the goals of the United States trade policy. We do not believe the Executive Branch has done as much as it can do under existing law.

With some exceptions, which we discuss later, we strongly believe that the existing statutory framework is sufficient to permit effective action if the President chooses to use that authority. The President has extraordinarily broad authority to take actions in the pursuit of better access to foreign markets. Sections 102 (relating to nontariff barrier agreements), 122 (relating to balance of payments), 123 (relating to compensation authority), 301 (relating to unfair trade practices), 404 and 405 (relating to treatment of nonmarket economies) and 501 (relating to GSP) of the Trade Act of 1974 are just some of the statutory provisions which the President may use to pursue U.S. objectives through negotiations. These provisions give him leverage during negotiations by enabling him to threaten action should the negotiations fail. They also give him authority to retaliate, in fact, in accordance with GATT rules if negotiations do fail.

Rather than spending an inordinate amount of time discussing the terms of new, unnecessary, authority based on the "new" reciprocity, we should consider whether existing legal authority is being used as effectively as it can be used. We do believe it would be helpful to incorporate a number of the concepts we discuss below into U.S. trade statutes. However, to the extent that legislation focuses solely on the misconceived and, in our view, largely irrelevant concept of bilateral retaliatory reciprocity, we are convinced that such legislation is not timely. This is because the current condition of the economy and the emotional level of the current debate on the "new" reciprocity requires forward looking and positive proposals if we are to avoid a Christmas tree decorated with numerous counterproductive protectionist proposals.

ISSUES RAISED BY PENDING BILLS

Let me now turn to positive concepts which will promote rather than impair trade. A number of bills before this subcommittee, including S. 2094, would provide the President a mandate to enter into international investment, services, or information flow negotiations. We believe this makes good sense in the context of traditional United States trade policy. Such an action on the part of the Congress would be a significant signal to our foreign trading partners that the initiatives of the Administration in these areas have the support of the U.S. Congress and U.S. business communities.

We also believe that the concept of adding investment practices which are unreasonable, unjustifiable or discriminatory to the scope of section 301 would be useful. In this regard, we believe it is important that the President not be required to retaliate against foreign investment during an investment dispute. This is clearly spelled out in S. 2094. We would go even farther, however, and not grant the President any new authority under section 301 to restrict foreign investment in the United States. We believe that, in an investment dispute under section 301, the President should be permitted to retaliate against goods or services using his section 301 authority or to retaliate against investment under other existing authority.

A number of bills, including S. 2094, would require the USTR and the Department of Commerce to conduct regular studies of foreign government laws and practices to indentify barriers to trade. We believe this concept makes good sense so long as the Administration is not required to take action based on the results of a study or to reveal its negotiating strategy and tactics.

During his testimony before this subcommittee, Ambassador Brock suggested that a statutory provision authorizing the President to enter into negotiations to eliminate or reduce barriers under foreign government laws or practices designed to protect and promote their high technologies would be desirable. A number of bills before this subcommittee contain such authority. We support Ambassador Brock's suggestion.

However a number of bills imply that sectoral trade balancing in the quantitative sense should be a goal of trade policy. This kind of sectoral approach to trade policy is dangerous. Taken to its logical extreme, quantitative sectoral reciprocity could stop all trade.

As stated earlier, we believe the basic principles which must underlie U.S. trade policy are MFN and national treatment across the board.

A number of bills would amend section 301 of the Trade Act of 1974 to add a cause of action for the denial of competitive opportunities equivalent to those in the United States. In our view, the practices now covered by section 301, i.e., those that are unreasonable, unjustifiable, or discriminatory, cover virtually any foreign government action which impairs open market access. We are not convinced that there is any need for change.

A number of bills permit independent regulatory agencies to consider discriminatory foreign government practices when they review foreign government activities within their jurisdiction. This would create multiple trade policies beyond the control of the President, and, therefore, would be unacceptable.

A number of bills would permit the President to unbind tariffs in GATT and to raise U.S. tariffs on certain newly developed competitive or high technology products. We belive this concept is extremely dangerous. It would serve as an open invitation to other countries to do the same thing to protect their "infant industries" thereby excluding many of our most competitive exports, such as the exports of the companies which are members of CBEMA.

A number of bills would authorize the President to negotiate increases or reductions in U.S. tariffs through trade agreements. We believe this is a necessary authority for the President. For this reason, CBEMA urges the extension of tariff negotiating authority under section 124 of the Trade Act of 1974 or comparable authority.

CONCLUSION

In conclusion, the goal of United States international trade policy must be to continue to expand open and nondiscriminatory world trade. The existing international trading system is the best structure in which to pursue this goal. The MFN and national treatment principles are the best principles on which to base this policy. We do believe that certain changes in the scope of GATT must be made to address problems of investment, services, and information trade. We also believe that certain changes in domestic law are desirable to promote negotiations on investment, services, information and high technology products. However, we underscore that the essential issue before us today is not the adequacy of international or domestic rules. Rather, the essential issue is the willingness of the Executive Branch to aggressively and effectively to pursue the basic goals of our trade policy.

CBEMA

MEMBERS
OF THE
COMPUTER & BUSINESS EQUIPMENT MANUFACTURERS ASSOCIATION

3M
Acme Visible Records, Inc.
AMP Incorporated
Apple Computer Inc.
Bell & Howell, Phillipsburg Division
Burroughs Corporation
Contitronix Inc.
Control Data Corporation
Dictaphone Corporation
Digital Equipment Corporation
EXXON Enterprises
Eastman Kodak Company
GF Business Equipment, Inc.
General Binding Corporation
Harris Corporation
Hewlett-Packard Company
Honeywell Information Systems, Inc.
IBM Corporation
ICL, Incorporated
Lanier Business Products, Inc.
Liquid Paper Corporation
Micro Switch, a Honeywell Division
NCR Corporation
Olivetti Corporation
Philips Business Systems, Inc.
Pitney Bowes
Quality Micro Systems, Inc.
Remington Rand Corporation
Royal Business Machines, Inc.
Sanders Associates, Inc.
Sony Corporation of America
Sperry UNIVAC
TRW Incorporated
Tektronix, Inc.
Texas Instruments Incorporated
The Standard Register Company
Topaz, Inc.
UARCO Incorporated
Xerox Corporation

4/82

puter and Business Equipment Manufacturers Association 311 First Street, N.W., Suite 500, Washington, D.C. 20001 (202) 737-8888

STATEMENT TO THE
SUBCOMMITTEE ON INTERNATIONAL TRADE
OF THE
SENATE FINANCE COMMITTEE
ON
TRADE RECIPROCITY LEGISLATION

BY THE

LEAGUE OF WOMEN VOTERS OF THE UNITED STATES

MAY 6, 1982

The League of Women Voters of the United States is a voluntary political action organization with 1,400 Leagues in 50 states, the District of Columbia, Puerto Rico and the Virgin Islands. We welcome this opportunity to state our position on trade reciprocity legislation currently before this subcommittee. While our comments will focus primarily on the two bills introduced by Senators Heinz and Danforth, because they are the most comprehensive, we will also speak more broadly to the general notion of trade reciprocity as addressed by several other bills within your subcommittee's jurisdiction.

For the past 45 years, the League of Women Voters has supported a liberalization of United States trade policy through the systematic reduction of tariff and non-tariff barriers. The League's long-held trade position had its origins in a 1920 study of high postwar prices. This and other early studies convinced the League that high tariffs and restrictive trade practices boost consumer prices, reduce competition in the marketplace and cause friction among nations. The depression of the early thirties, accentuating the impact of the high tariffs of the Smoot-Hawley Tariff Act of 1930, deepened League recognition of the importance of good trade relations and moved the League to take action for the first time on trade matters.

In 1937, League members pushed for the first renewal of the Trade Agreements Act of 1934. It is no small coincidence that this important law, which authorized United States participation in the first five rounds of negotiations under the General Agreement on Tariffs and Trade (GATT), was called the Reciprocal Trade Agreements Act of 1934. I make this point to emphasize the League's long-standing commitment to the traditional concept of reciprocity.

The term "reciprocity," as recognized and supported by League members, refers to a crucial principle of GATT trade negotiations. It implies an approximate equality of concessions accorded and trade benefits received among or between participants in a negotiation. Reciprocity in practice, as applied under the GATT bargaining framework, has resulted in the systematic lowering of United States import duties and other trade restraints in return for similar concessions from other countries. These are goals the League continues to advocate.

However, we are extremely concerned about the corrupted form that the definition of reciprocity takes in the various bills at issue today. In its current and expedient use, this so-called "reciprocity" seems to mean that the United States will decide whether American goods are receiving treatment abroad equal to the treatment we give to foreign goods here. If not, then this government -- unilaterally -- will equalize matters by new restrictions on imports. This one-sided view of trade relations can only serve to reverse the progress made in the last thirty years toward a multilateral negotiating system by signaling a retreat to bilateral protectionism.

Perhaps the biggest danger in the bills proposed by Senators Heinz and Danforth is that the concept of reciprocity, as they envision it, turns its back on the Most-Favored-Nation concept of non-discrimination, the cornerstone of 30 years of multilateral institution building. We have already had our history lesson on the repercussions of a retreat to narrow bilateralism in world trade. The surge of protectionist legislation following World War I, which culminated in the Smoot-Hawley Tariff Act of 1930, demonstrated all too clearly the linkage between domestic and international politics. Smoot-Hawley's "beggar-thy-neighbor" policies led other nations to retaliate with similar restrictions; United States and world trade shrank to a fraction of what it had been, and deteriorating political relations exacerbated the still unhealed wounds of World War I.

That disastrous experience provided the impetus for the post-World War II return to multilateralism, as embodied in the General Agreement on Tariffs and Trade (GATT). Since its inception in 1947, the GATT, under United States leadership, has functioned as the principal international body concerned with world trade relations and the reduction of trade barriers. As such, the GATT has served to restrain individual nations from resorting to facile political solutions, at the expense of other nations, to difficult economic questions.

Its activities over the past three decades have evolved in response to extensive changes in the world economic scene: shifts in the balance of economic strength, the emergence of developing countries as a force in international affairs, the trend toward regional or preferential economic groups, monetary and payments difficulties a[illegible] growing participation of Eastern European countries in international trade. These sweeping changes have underscored the GATT's role as a forum where such developments can be resolved as well as an instrument by which their undesirable effects can be mitigated through continuing pressure for the further liberalization of world trade.

The results of the seventh major Multilateral Trade Negotiation (MTN) convened in the context of the GATT -- the so-called Tokyo Round -- are particularly impressive. Not only did this MTN occur during a period of slow recovery from the world recession, amidst intensifying pressures to raise barriers to trade, but it addressed broadly and for the first time a number of nontariff barrier questions. After seven years of summit meetings, agreement was reached on six codes of conduct to govern the use of nontariff barriers. This was a considerable accomplishment since nontariff barriers are often quite difficult to identify and measure, thus complicating the task of negotiating codes to govern them.

But because these new codes have only been part of United States law for two years, their effectiveness cannot yet be assessed. The Administration should have a chance to apply and test them, using the dispute settlement procedures set forth in the GATT, before this Congress prematurely debates legislation that severely undermines the multilateral process. Having outlined the League's philosophical support for the multilateral approach to world trade, we will now address the specific reciprocity bills under consideration.

Legislation introduced by Senator Heinz, S 2071, would amend Section 301 of the Trade Act of 1974 to increase the President's authority to retaliate against unfair trade practices of foreign governments. First, it would expand coverage of Section 301 to include direct foreign investment by United States nationals or citizens and provide explicit Presidential authority to begin negotiations on an international investment code.

Second, the bill would provide separate authority for Presidential action to "establish or further the principles of national treatment or reciprocal market access" for United States goods, including agricultural goods, services and investment. Although the Heinz bill defines national treatment, it leaves the goal of "reciprocal market access" undefined. S 2071 would also amend Section 301 so that the dispute settlement process could be initiated by resolution of the Finance or Ways and Means Committees, in addition to the private petition or Presidential initiative routes in current law. The bill requires the President to report to Congress, within four months of initiating an investigation, on the progress of the case and the remedies being considered.

Third, with respect to action taken under these new reciprocal market access provisions, the Heinz bill gives the President additional retaliatory authority beyond what is in the present statute. According to the newly authorized sanctions, the President could adjust government procurement policies or request federal regulatory agencies (such as the FCC or ICC) to consider another country's adherence to reciprocity principles in acting on applications from that government or its nationals. Further, the President would be authorized to propose "mirror image" legislation that matches the nonreciprocal practice of the offending country. Finally, and perhaps most acrimoniously, the bill allows the President to instruct United States World Bank and IMF directors to oppose loans to countries against whom reciprocity complaints are pending.

However, the most onerous part of the Heinz bill -- and the essence of League opposition to it -- lies in the amendment to Section 303 of the 1974 Trade Act. The President under that section is currently required to utilize established GATT consultation procedures in resolving trade disputes. In an unmistakable slap at the whole multilateral process, S 2071 makes use of the GATT system merely optional. With regard to cases arising under the new reciprocity provisions, it says that the Administration may simply forego initiation of consultations under the GATT if the President wishes to do so.

As in the Heinz bill, legislation introduced by Senator Danforth, S 2094, also would expand coverage of Section 301 to include foreign investment, authorize the President to negotiate an international investment code, and provide procedures to enforce reciprocal market access. It too provides for initiation of the 301 process by petition from the House Ways and Means or Senate Finance Committees. In addition, the bill requires the United States Trade Representative to make preliminary recommendations to these two committees, within 180 days of initiating an investigation, on options being considered to remedy an alleged unfair trade practice.

Unlike the Heinz bill, the Danforth bill introduces an entirely new provision of law which requires the Administration to identify the most severe market access barriers imposed by our major trading partners. Each year, USTR would report to Congress on foreign practices considered unfair under this law, including impediments to trade in services and investment. The Administration also would be required to estimate the trade-distorting impact of such barriers and propose actions to offset their effects should efforts to negotiate their elimination fail.

But the crux of the Danforth bill lies in the answer to this basic question: What is considered an "unfair trade practice?" The answer set forth in the bill -- the benchmark for determining reciprocal market access violations -- is defined as the denial to the United States of "commercial opportunities substantially equivalent to those offered by the United States." This definition is a radical departure from the Most-Favored-Nation principle central to the GATT and would dictate, in essence, a "United States treatment" standard as the measure of fair trade in a foreign country. In practice it would mean that even if treatment in a foreign market were non-discriminatory, it still could be considered "unfair" under the Danforth bill providing the treatment were not "substantially equivalent" to that accorded in the United States market.

It is true that this "United States treatment" standard would apply only to areas not now covered under the GATT, i.e. services and foreign investment, while existing GATT standards and procedures would apply to areas included in international trade agreements. Nevertheless, the emergence of a "United States treatment" standard in services and investment, two critical areas where no international discipline exists, creates the distinct possibility that this standard may be carried over into other areas. In the League's view, such a truculent and one-sided criterion violates the spirit if not the letter of the GATT.

Moreover, the absence of any definition for reciprocal market access under Senator Heinz's bill begs the question, thus raising the possibility that reciprocal access in his bill would be measured by Senator Danforth's "United States treatment" standard. The optional nature of the GATT process under the Heinz bill seems to enhance the likelihood that this standard might, in fact, emerge.

Let's consider for a moment the potential repercussions of enacting this type of reciprocity legislation. In the current world economic climate, members of this subcommittee should realize the grave risk of setting off a chain reaction of protection action.

For the second time in 20 years, expansion in world trade is at a standstill. The world economy in 1982, which has been growing increasingly interdependent for decades, is now being subjected to the most divisive economic and political pressures of the postwar period. Foremost among these pressures are recession and rising unemployment, which in turn are adding fuel to new demands for trade protection.

The United States, for example, has told the European Common Market to stop subsidizing farm exports. American steel producers are pushing hard for stronger safeguards against low-priced steel exported from Western Europe. AT&T, in keeping with a new "buy American" policy, refused to buy optical fiber cable from its lowest bidder: the Japanese. And only last spring, the American auto industry induced the United States government to exact so-called "voluntary" auto export quotas from the Japanese.

Conversely, the Europeans have already threatened to tax imports of American soybeans and other farm commodities if the United States takes action that would sharply curb steel imports. The Common Market, with its approximate $20 billion United States trade deficit, also has taken limited action against imports of American synthetic fibers. Similarly, Japan despite a $16 billion United States trade surplus, is proposing to increase tariffs to protect its ailing aluminum industry against competition from the United States. In addition, Japan's Nippon Telephone and Telegraph Company, like its American counterpart, has shown evidence of its own "buy domestic" policy.

And together, major European nations and the United States last December joined in a four-year re-extension of the Multifiber Arrangement which set tight limits on the export growth of major textile exporting countries. Overall, it seems clear that whether individual or collective, obvious or subtle, protectionist sentiment is growing and creating strains both within the industrial world and between the developed and developing nations.

However, despite the recent intensification here and abroad of initiatives that inhibit freer trade, there is evidence to suggest that the American public as a whole is increasingly becoming more aware of the benefits of a liberalized trading system. Members of Congress who represent states or districts in which industries are languishing and workers are losing jobs understandably focus on the immediate problems of their constituents, concluding that a tough foreign trade posture is the wisest political course. The benefits of freer trade, however, are less tangible and are widely spread among the entire population. Consumers and others with a stake in open trade may not even be aware of the specific benefits they are receiving and are rarely organized to oppose protectionism.

The following selected highlights from a Roper public opinion poll, commissioned by the League of Women Voters Education Fund in January 1981, shed some light on the broader public perception of international trade:

- *The American public's perception of United States economic dependence has risen slightly from the mid-1970's. About two-thirds of Americans today view the United States as economically dependent, to some extent, on other countries.*
- *Nearly half of the American public (44%) views United States trade with other countries as benefitting the United States. And majorities of a few population groups -- the college educated, executives/professionals and those earning $25,000 or more annually -- view foreign trade as advantageous to the country.*
- *Americans now are almost as likely to associate competitive imports with lower prices for consumers in the positive sense as with lost jobs in the negative sense.*
- *Despite the fact that a large majority of Americans (81%) indicated support for some type of import restrictions, this did not connote opposition to foreign trade per se. It was divided evenly between those who would favor increased import restrictions and those who would favor decreased restrictions or none at all.*

In conclusion, the League believes that the current and severe strains on the world trading system will only be exacerbated by enacting a holier-than-thou United States reciprocity law, either one that makes American use of the GATT consultation process discretionary, such as the Heinz bill, or one that enforces a one-sided American view of trade reciprocity, such as the Danforth bill. Under the Danforth "United States treatment" standard, complaints of other nations' trade violations no longer need be "unfair" or "unreasonable," but just different from the United States. The fact that the Danforth bill makes utilization of the GATT process mandatory ignores the possibility that once this new standard is applied in the areas of services and foreign investment, its use could easily spread to more traditional areas. In sum, the adoption of reciprocity legislation in its current form can only have one result: a breakdown in the multilateral trading system and a retreat to bilateralism in which nations try to balance trade product-by-product and sector-by-sector.

Rather than strengthening the President's hand to take "reciprocal" action, Congress should be encouraging the Administration to help strengthen the multilateral trading system embodied in the GATT. Specifically, at the Paris economic summit in June and the GATT ministerial meeting in November, the United States should push for immediate international negotiations to develop codes for trade in services and agriculture as well as foreign investment. Equally as important, the United States must also work aggressively within the GATT to ensure compliance with the provisions on nontariff barriers established in the Tokyo Round.

The pressing need today is to demonstrate determination to resolve the trade and investment crisis that threatens the future of all nations. The opportunity for United States leadership has never been greater. As United States Trade Representative Brock told members of this subcommittee earlier this month, "We have a great investment in the multi-lateral system. We must make it work."

U.S. Council for an Open World Economy
INCORPORATED
7216 Stafford Road, Alexandria, Virginia 22307
[redacted]
[redacted]
(202) 785-3772

Testimony of David J. Steinberg, President, U.S. Council for an Open World Economy, in hearings on "reciprocity" bills before the Subcommittee on International Trade of the Senate Committee on Finance, May 6, 1982

(The U.S. Council for an Open World Economy is a private, non-profit organization engaged in research and public education on the merits and problems of developing an open international economic system in the overall public interest. The Council does not speak on behalf of any private interest.)

Summary

This testimony opposes the attempted redefinition of "reciprocity" to mean bilateral equivalence of market access. It regards such legislation, not only as ineffective in addressing the problems the United States faces in securing equitable access to Japan and other world markets, but as counterproductive and harmful to this trade objective. The statement advocates vigorous, responsible use of Section 301 of the Trade Act to counter unreasonable foreign import barriers, and urges a strategy to secure the ultimate in trade reciprocity -- free trade itself on the part of the industrialized countries of the Free World.

I applaud the emphasis placed by the Administration and many in Congress (including the chairman of the Subcommittee and the ranking minority member) on the need for other countries, especially the most economically advanced countries, to reduce barriers to international trade, services and investment, particularly impediments that unfairly obstruct U.S. access to those markets. However, neither the Administration's trade-policy agenda nor the trade bills now in the Congressional hopper adequately address the nation's needs in this regard.

The Administration has nothing identifiable as a coherent strategy for rapid, far-reaching progress toward a truly open world economy. It has a loudly proclaimed free-trade stance, but not a free-trade strategy that can be called definitive and dependable. Its plans for the international economic summit in June and the meeting of trade ministers in November fall far short of the dramatic initiative urgently needed to save the world economy from the deeper protectionist pitfalls into which it may slip during this perilous period for virtually all countries. The other contracting parties of the General Agreement on Tariffs and Trade may not be ready for anything more than the proposed "work programs on longer-term issues" and reviewing implementation of the codes negotiated in the Tokyo Round. But the United States should not lower its sights to the lowest common denominator. It should raise the sights of our own country and the world to the need to seek, with deliberate speed, the freest and fairest international economic system -- indeed optimum reciprocity through negotiation of a free-trade charter (embracing goods, services and investment) with as many industrialized countries as wish to join us in this venture. Once one or more countries negotiate such an arrangement with the United States, all will do so sooner or later. If reciprocity in its finest sense is what the champions of "reciprocity" want, totally free trade, fused with totally fair trade, should be the length and breadth of their perspective.

Presumably reflecting the Administration's view, the Deputy U.S. Trade Representative recently said "reciprocity for the United States means resisting entrenchment and mounting protectionism abroad and nudging our trading partners forward to a level of market openness similar to our own." Such a definition is not good enough. The nudging is too limited, and the slippage too great. If, as the U.S. Trade Representative has said, "this is the most crucial year we have faced in international trade policy since the second world war," this is a time for much more than the Administration is seeking, than anyone in Congress is seeking, indeed more than the U.S. "liberal trade" community (almost without exception) is seeking.

"Reciprocity" Revisionism is Regressive

While much more can and should be done to advance the cause of true reciprocity in the sense so assiduously nurtured with such rewarding results in the last half-century, the least we can and should do is resist a revisionist redefinition that would set in motion bilateral, trade-restrictive reactions to the alleged failure of certain countries to permit U.S. access to their markets substantially equivalent to their access to the U.S. market. This concept of reciprocity, while possibly inducing some short-term liberalization in certain cases, runs the general danger of ratcheting import barriers higher not lower, and the level of world trade lower not higher. The U.S. economy could hardly benefit from bilateral-reciprocity tactics that (a) sock American consumers, (b) sacrifice import-dependent and export-dependent American jobs in the wake of retaliatory or emulative reaction abroad, and (c) suppress the beneficial effects of freer imports on U.S. productivity and overall competitiveness.

The principal sponsor of S. 2094 (the Reciprocal Trade and

Investment Act of 1982) has said that to secure such bilateral equity "the United States must be prepared to force the issue," seeking, not necessarily rigid sector-by-sector, product-by-product equality, but the requirement that "other countries play by the same rules we observe," and to achieve this "without violating existing trade agreements" (quotations from the Congressional Record of February 10, 1982, pp. S678-9). However, notwithstanding his contention that executive action under this legislation would be discretionary with the President ("the bill strengthens the Administration's hand without forcing it"), the new conception of reciprocity (if in fact it can be reconciled with existing U.S. trade agreements and if in fact it is meant to be enforced) would produce a cross between a Pandora's box and a can of worms -- a cross the world economy, and the United States itself, cannot afford to bear.

How is bilateral reciprocity to be measured? By what standards, and whose standards? Is each country free to decide reciprocity, and act on this assessment, in any way it chooses? What assurance can there be, and how enforced, that whatever standards are used will be applied indiscriminately and with equal intensity to all countries? Instead of forcing the issue of equity in trade relations, might we not shoot ourselves in the foot -- or worse? If negotiation of a free-trade charter, and the optimum in multilateral reciprocity which this would engender, seems a fanciful, formidable undertaking, fraught with unlimited complexities, how much less formidable and more manageable would be a train of actions and reactions under the rubric of bilateral reciprocity?

There is an urgent need to change attitudes in Japan and elsewhere concerning international trade -- to persuade these countries to give as much attention to removing import impediments as they give to expanding exports. Referring to Japan's attitude as partly to blame for the current confrontation over that country's import policies and practices, one commentary noted that "the biggest barrier to (Japanese) imports today is a state of mind," and that pressures to get it changed have brought Japan and the West "to the edge of a mutually destructive trade war." This state of mind, I believe, may be traceable in part to something bordering on paranoia in Japan over the country's poor endowment in fuel and raw materials and its overall economic vulnerability in a highly uncertain, undependable world economic environment. Almost without exception, the "fair trade" and "reciprocity" bills in Congress, even if none is passed this year, will only aggravate this troublesome state of mind. As will the threats of Congressional protectionism emanating not only from Congress but from various quarters of the Executive Branch. High-level officials of the Department of Commerce in particular (in various administrations including the current one) have pursued this tactic as if it was mandated by their oaths of office or prescribed by administrative manuals for their respective posts.

Japan and other countries should be more sensitive to our country's pleas for as much fair play in access to their markets as we accord them in our market. But we should be more sensitive to the danger that, if we force the issue in the wrong way, harmful retaliation and emulation in trade policy may not be the only result. The U.S. image as an ally and a leader might be tarnished, with policy implications that far transcend international commerce. We could conceivably get much more cooperation from Japan if we sought that country's participation in a free-trade charter than is likely from the kind of pressure the United States has used so often in the past and is envisaged in the "reciprocity" bills. Such an initiative would entail reduction and removal of barriers our own country imposes and to which other countries take serious exception. The fact that Japan and other countries resist U.S. requests for removal of their barriers (often vehemently, sometimes bordering on arrogance) may have much to do with a shortage of credibility in America's protestations of devotion to free international trade. Our own resort to import restrictions on many products, and most recently our pressure on Japan to curb its exports of automobiles even though imports did not cause the severe problems of the U.S. auto industry, have not done much for our image as champions of free trade.

Three ways to secure maximum progress toward trade reciprocity in the most respected, most respectable sense of the word are: (1) make the most vigorous, most responsible use of Section 301 of the Trade Act as now written; (2) extend the concept of equity and reciprocity to international services and investment, not limit it to goods alone; and (3) push reciprocity in its most respectable sense to its ultimate dimension: negotiation of a free-trade arrangement by the industrialized countries under the existing rules of the General Agreement on Tariffs and Trade (with as many of these countries as wish to participate), with special privileges and commitments for underdeveloped countries that participate. If indeed the objective of reciprocity is fairness, attention should be given to the fact that the most far-reaching progress toward totally fair trade will not be achieved unless impelled, in fact compelled, by negotiated removal of all discriminatory impediments to international trade, services and investment in accordance with a realistic timetable (permitting departures to help deal with unforeseen emergencies). No "reciprocity" bill now in Congress could possibly ensure significant progress toward this conceptualization of optimum reciprocity and consummate fairness in international commercial relations.

Sector Reciprocity or Harmonization

Sector-by-sector reciprocity is foreign to any reasonable, constructive and responsible concept of international-trade reciprocity. However, with most countries moving inexorably and in many cases rapidly toward increasingly more sophisticated forms of economic development, there is growing need for narrowing and ultimately removing the differences between the barriers which at least the more advanced countries impose on imports of various products, especially manufactured goods. The best known example of proposed sector harmonization is high-technology trade, services and investment. Bills to this end have been introduced in Congress. There are many less exotic instances where sector harmonization (aiming at free trade in these areas) is an idea whose time has come. Steel is an example. The U.S. steel industry has often said it would do well under conditions of free trade in steel on the part of all producing countries (certainly the most significant producers). Other industries have made similar claims. We ought to get on with the job of negotiating such agreements, including carefully drawn rules to ensure fair international competition in these products.

However, the prospects for much progress toward sector free-and-fair trade (if any progress at all) in any product category seem dim except as part of a comprehensive free-trade charter under which optimum reciprocity for each country in goods, services and investment, respectively, and across the whole range of international business dealings, may be ensured.

Shortchanging America

A final note about the free-trade initiative I have advocated in this testimony and in many other places. Some skeptics and critics have called this avant-garde position (unique, incidentally, even in the "liberal trade" movement) fanciful, unrealistic, indeed quixotic (my host in a recent talk show referred to me as a sort of Don Quixote). I shall not here elaborate on my version of the practicality of my proposals -- only re-emphasize that free trade and fair trade are one objective indivisible, achievable by one strategy indivisible. Anything short of this as a goal earnestly to be sought, with a domestic adjustment and redevelopment strategy to backstop it, shortchanges America as a nation and the American people as workers and consumers.

STATEMENT OF THE NATIONAL FOREIGN TRADE COUNCIL
FOR HEARINGS OF THE SUBCOMMITTEE ON INTERNATIONAL TRADE
OF THE COMMITTEE ON FINANCE
U. S. SENATE
ON S.2094 AND OTHER RECIPROCITY BILLS

The National Foreign Trade Council welcomes the opportunity to comment on "reciprocity" legislation - a group of bills which have as their common objective to broaden the powers of the President in dealing with actions by foreign governments which unfairly burden U.S. exports and foreign investments.

We recommend that Congress, in evaluating these proposals, seek to preserve and advance the principles of freer trade and multilateral solutions to international trade disputes. These principles have guided U.S. policy for many years and have contributed to the rapid growth of international trade and investment, and to the economic strength of the free world. Any legislation which would result in an increase in trade barriers or in a shift by the United States away from multilateralism toward a country-by-country approach to international trade relations would in our view be regressive. Such a shift toward bilateralism would have an adverse effect on international economic growth. Its disruptive effect could extend to our country's international political alliances as well. We also urge that any legislation which is enacted avoid measures which increase the risk of a violation by the United States of its international obligations under the General Agreement on Tariffs and Trade (GATT) or heighten the risk of retaliatory actions by foreign countries against United States trade and investments.

The developments which have led to the introduction of bills to strengthen the hand of the United States in international trade negotiations are well known. They include the recent recession, a high rate of unemployment - particularly in industries exposed to severe competition in the world market - and the widespread perception that many foreign governments engage in economic intervention on behalf of their own nationals either in violation of international agreements or in ways which are unfair even if not unlawful under accepted international ground rules.

The "reciprocity" legislation which is under consideration by the Subcommittee on International Trade is particularly addressed to the last of these concerns, namely actions by foreign governments which are inequitable and injurious to the U.S. economy and which involve a manipulation of the international trading system.

It is difficult to disagree with the objective of certain of these bills: to give the U.S. Government leverage in dealing with such practices, and impress our trading partners with the seriousness of our purpose. However, we are concerned with the emphasis placed by the bills on the strategy of handling trade disputes on a country-by-country basis and exercising leverage primarily through limiting access to the U.S. market. The thrust of the "reciprocity" legislation represents an undesirable shift away from United States support and utilization of the GATT, the principal international agreement and institution to maintain a free and open international trading system. Instead we urge the U.S. Government to negotiate under existing international agreements for the removal of discriminatory barriers against U.S. goods, services and investments.

The Reciprocal Trade Agreements Act of 1934 launched a series of agreements with 20 nations to reduce trade barriers on a reciprocal basis and then to extend these reductions on a most-favored-nation basis, thus resulting in a commitment to multilateral agreements as opposed to the bilateral reciprocity agreements of prior years. The establishment of the GATT in 1948 carried forward the concept of multilateralism which has guided U.S. policy to this day. Over a hundred countries have joined the GATT, accounting for about 80% of the trade of the non-communist world. Under successive negotiating rounds of the GATT, major reductions of tariffs worldwide have occurred. In addition, at the Tokyo Round of multilateral trade negotiations, codes were enacted to reduce non-tariff barriers to international trade, including subsidies, government procurement and standards.

These are major accomplishments, and the weaknesses in the GATT, which are discussed next, ought not to be permitted to overshadow these important achievements of the GATT over the past three decades.

Need to Strengthen GATT

It is undeniable that there are inadequacies in the GATT, some of which have had adverse effects on U.S. economic interests:

- First, the GATT was not directed at services or investment, and does not adequately cover these sectors. Countries are therefore left relatively free to impose discriminatory and unfair restrictions on the establishment by foreign companies of service industries or of investments within their borders, and these restrictions are in fact widespread. Countries also, in the absence of other international agreements, are generally free to deny foreign investment access to their economies.

- Second, many of the GATT rules can be easily circumvented. For example, the GATT subsidies code does not effectively bar indirect subsidies of exports. Nor does the GATT provide sufficient safeguards to obviate the need for voluntary export restraint agreements.

- Third, many developing nations have not subscribed to, and thus are not bound to respect, the Tokyo Round codes on the reduction of non-tariff barriers.

- Fourth - and this relates more to the attitude of the participants than to the rules themselves - many nations, including the United States, have found it convenient to by-pass the dispute settlement procedures of the GATT and seek bilateral solutions to trade problems even when direct violations of GATT rules are involved.

- Fifth, there are many forms of intervention by governments in international trade flows which are not prohibited by the non-tariff barrier codes of the GATT and which confer unfair economic advantages on nations which choose to engage in intervention. Some of the complex obstacles to imports into Japan fall in this category.

These deficiencies in the GATT can, over time, be remedied, and we believe that the United States should be at the forefront of that effort. If the United States enacts legislation which commits our country to unilateral solutions to trade problems, we can expect other nations to follow suit by turning increasingly to protectionist or retaliatory measures outside the GATT, thereby weakening the fragile consensus which now supports an open international trading system.

The Council believes that the GATT should and will be strengthened. That is an objective of the GATT Ministerial Conference in November. U.S. negotiators at that meeting are expected to call for an intensive study of international barriers to services and investments. The negotiation of a safeguards code and improvements in other non-tariff barrier codes are a long-term objective of the United States. Moreover, utilization of the dispute settlement mechanism of the GATT by the United States is increasing.

Therefore, we strongly endorse provisions of legislation, being considered by the Senate Subcommittee on International Trade, which authorize the President to enter into bilateral and multilateral negotiations for international agreements to reduce barriers to international investment and exports of services as well as goods.

Reciprocal Market Access

While several of the trade bills before this Committee call for support and improvement of the GATT, the main point of the bills is directed toward amendment of Title II of the 1974 Trade Act, particularly Section 301, which empowers the President to withhold the benefits of trade agreements or impose import restraints when a foreign country engages in actions which unreasonably or unjustifiably burden U.S. commerce.

Section 301 is already a formidable trade weapon. It is broad in its definition of injurious conduct: foreign country restrictions on U.S. trade (both goods and services) are covered, and foreign restrictions on U.S. investment would appear to constitute a burden on U.S. commerce within the meaning of the statute. Section 301 offers a broad range of remedies: suspension of benefits of individual agreements; imposition of duties or quotas; and restrictions on services. It is noteworthy that the President can determine that an action by a foreign government is an unreasonable burden on U.S. commerce even if that action does not violate the GATT or any existing multilateral or bilateral agreement to which the United States is a part.

In view of the breadth of the powers already conferred on the President, and the accompanying risk already inherent in Section 301 that the exercise of these powers may produce confrontations and retaliation, we think that a strong case can be made that Section 301, in its present form, without further amendment, is an adequate instrument for the resolution of the vast majority of our trade disputes with foreign nations.

While some of the proposed amendments to Section 301 may be desirable for clarification or to correct unintended omissions, we are particularly concerned with the so-called "reciprocity" proposal to amend the Act to make "substantially equivalent commercial opportunities"* or "reciprocal market access"** a principal criterion for retaliatory action.

---

* "Reciprocal Trade and Investment Act of 1982" (S.2094), introduced by Senator John C. Danforth

** "Reciprocal Trade, Services and Investment Act of 1982" (S.2071), introduced by Senator John Heinz

The introduction of a "reciprocal market access" test could be inconsistent with the spirit of the GATT by promoting sectoral or industry-by-industry retaliation. It is unrealistic to look for precisely equal treatment, product for product, between each industry in the United States and the comparable industry in each foreign country. However, bilateral and sectoral responses may be appropriate in dealing with discrimination in service industries. Our goal is an open trading and investment system, in which countries all benefit from an exchange of goods, services and investment capital, not a rigid policy of exactly equal treatment between each pair of trading nations. Moreover, as the U.S. Trade Representative has testified, retaliation by the United States against a country which does not provide the same treatment as the United States may result in a violation of GATT.

While it is true that the Trade Act of 1974 made it a principal U.S. negotiating objective in the Tokyo Round to obtain equivalent competitive opportunities in appropriate product sectors for U.S. exports to developed countries, nonetheless, we do not favor making "substantially equivalent commercial opportunities" the *sine qua non* of U.S. trade relations with all countries regarding *all* sectors, all products, services and investments. We believe that if a foreign country treats U.S. traders and investors as well as it treats domestic industries and those of all other nations, and in accordance with international law, it has in most cases fulfilled its obligations. Moreover, there are significant problems involved in establishing acceptable and valid criteria for determining whether a country offers "substantially equivalent" access to U.S. investors. And even if some countries do not open their doors to trade and investments to the same extent the United States does, there is a danger that the need to push for "substantially equivalent" access could prevent U. S. negotiators from achieving useful and substantial improvements in the treatment of U.S. traders and investors which fell short of "substantial equivalence." Further, a rigid application of Section 301 based on the test of substantially equivalent market access could increase the risk of retaliation against U.S. industries which have been long established in foreign environments.

This is not to say that it is irrelevant whether a foreign country is less receptive to U.S. exports or investments than the United States is to the exports or investments of that country. The treatment which the United States accords the exports and investments of a foreign country should be part of the assessment of overall trade relations which the President should make when entering into trade negotiations with a foreign country or taking action against that country's exports or investments pursuant to Section 301 of the Trade Act. Accordingly, we support the proposal* for an annual report by the President on barriers which deny to the United States commercial opportunities substantially equivalent to those offered by the United States. However, we would object to the use of any such list to trigger retaliatory actions by the U.S. We would also caution against a requirement that the report identify practices which are inconsistent with the GATT: this in effect would prejudge GATT rulings. We also think it inadvisable to establish a requirement for the President to disclose plans of action or negotiating strategies to offset the effects of these barriers: this would decrease, not increase, the flexibility of the President's authority.

Coverage of Services and Investment

The Council supports provisions of bills by Senators Danforth and Heinz which specifically include "foreign direct investment by citizens or nationals of the United States" among subjects covered by Section 301 of the Trade Act and which identify restrictions on direct investments by foreign countries as discriminatory burdens on U.S. commerce.** While foreign direct investment would seem logically to fall within the term "commerce" in the Trade Act, the inclusion of language to confirm this may be useful to eliminate any possible doubt. Although services are included in the Trade Act, as amended in 1979, we support provisions which would clarify that trade in services is subject to the Act.

Enforcement of Remedies

Provisions in reciprocity bills would give the President substantially increased flexibility and greater authority to take action against the discriminatory measures of foreign governments, including imposition of trade barriers against trade barriers, investment barriers against investment barriers, services against services--or any combination, across product and sector lines, worldwide or against a single offending country.*** If used precipitately, this power could trigger retaliation and start ourselves and our trading partners down the road toward the protectionist bilateralism of the 1930s.

To emphasize the risks inherent in Section 301, we recommend that any new trade legislation amend Section 301(e) to provide that the President, before taking retaliatory action, shall wherever possible make use of the dispute settlement procedures of relevant international agreements, and consult with the Trade Representative as to the possible effect of a 301 procedure on trade relations between the United States and the country involved, including the risks of retaliation. Reciprocity legislation may, to a large extent, reflect a belief the Executive Branch has not pursued U.S. rights with sufficient force: we urge that these existing rights be enforced with all due vigor.

---

* S.2094 by Danforth

** Section 4 of S.2094; Section 3 of S.2071

*** Section 4(a)(5) of S.2094: Action ". . . need not be limited to the equivalent product, investment or service sector of the offending act, policy or practice."

Finally, we comment briefly on a few specific provisions in pending legislation: S.2071 adds* to the list of "other action" the President may take, in addition to all appropriate and feasible action within his power, the authority to request Federal regulatory agencies to consider whether countries provide equal treatment.

We do not favor this proposal, for the reason that independent regulatory bodies are not in a position to administer aspects of U.S. trade policy. Their role, which can prove valuable, should be confined to advice and fact-finding in cases involving international trade disputes.

We also have strong reservations about proposals to authorize specified Committees of Congress to institute complaint proceedings by adopting resolutions calling for Presidential action against foreign discriminatory practices.** Although Congress will be the ultimate arbiter of U.S. trade policy, we believe that Section 301 already includes adequate procedures to assure that trade complaints will be brought to the attention of the Executive Branch.

In the final analysis, the Council suggests that the principal thrust of our efforts to maintain a free and open international trading system should be directed toward the strengthening and enforcement of existing international trade agreements, particularly the GATT. Trade legislation should provide a clear mandate for the Executive Branch to enforce our rights under existing agreements, through diplomatic leverage and through GATT under the multilateral dumping, subsidy and procurement codes, rather than to engage in unilateral retaliation.

---

*(Section 3(a)(a))
** Section 4(d) of S.2094, and Section 3(b) of S.2071

National Foreign Trade Council, Inc., 100 East 42nd St., New York, NY 1001

WRITTEN STATEMENT OF
AMERICAN INTERNATIONAL AUTOMOBILE DEALERS ASSOCIATION

for the

U.S. Senate Committee on Finance

Subcommittee on International Trade

S.2094, S.2071 and other Reciprocity Bills

May 20, 1982

American International Automobile Dealers Association represents the interests of 7,000 American dealers who sell imported automobiles, and the 165,000 U.S. employees of these dealers. For most of the past decade, the automobile industry has occupied a central place in the rapid evolution of international economic relations. In the interests of our membership and consistent with the broader international interest of the United States in promoting greater productivity at home and fair treatment of U.S. industries abroad, we urge that legislative action for reciprocity be consistent with our international trade obligations; that it be multilateral rather than bilateral; that we strengthen the negotiating mandate for a more liberalized world trading system and a reduction of barriers to U.S. trade.

AIADA would support the strengthening of existing agreements to cover trade in services, investment and high technology. We believe that the multilateral negotiating process is our best opportunity for progress toward a more open trading system.

While the word reciprocity has been associated with liberalizing trade in the past, now the meaning is less clear. Our concern is that reciprocity will be used as a weapon for retaliation, and that the impact will be to close markets rather than increasing market access. AIADA supports a U.S. policy for the reduction of all barriers to trade.

The risks of Reciprocity legislation are far greater than any possible advantage. American jobs are created by a climate of free trade. Jobs dependent on American exports will be destroyed if we close off markets. Imports increase consumer choice and offer a competitive challenge. We need to actively support export promotion for our own products, as well as reviewing those U.S. laws which impede our ability to compete in the world market. AIADA advocates a strong aggressive export policy based upon a sound economic policy in the U.S. and removal of some of the governmentally imposed barriers to enable U.S. companies to compete more effectively overseas.

In particular, we call on the Administration to move aggressively against proliferating performance requirements, combined with lavish investment incentives, as promulgated by many developing countries and in some instances, by industrialized nations. These performance requirements, including such trade-distorting practices as domestic content laws and export requirements, are drawing capital investment and jobs from the United States.

In the automobile industry in particular, the combination of investment incentives and performance requirements have been a major factor in the decision of American automobile manufacturers to concentrate much of their capital investment and growth planning abroad. Consequently, while capital spending plans in the United States have been cut back in the past year, General Motors and Ford are proceeding with foreign investment programs that include six major GM plants now under construction in Europe, Ford engine plants in Mexico and other expansion plans in Germany, England, France, Spain and elsewhere.

The nation's imported automobile dealers are particularly concerned lest the current interest in reciprocity legislation disguise a drive to return to the policies of bilateralism that controlled our trade programs in the 'thirties.

Bilateral trade policies in the late 1920's and throughout the 1930's contributed to the deepening and prolonging of the worst economic disaster of the 20th century, the Great Depression of 1929-1938. Those old enough to remember that era without nostalgia are not anxious to repeat the experience.

The great leap forward in world trade began in the post-war era with the introduction of multilateral trade agreements, a system whereby the nations of the world have agreed mutually to observe and respect certain standards and policies. The foundation of this program is the "most favored nation" agreement, under which no nation will be treated less favorably than another in trade matters.

Under multilateralism, United States exports have grown from $14.5 billion in 1950 to $365 billion in 1981; from five percent of our gross national product to 12.5 percent of our GNP. Today, the United States is the world's largest exporter. In dollar volume, our exports are 65 percent greater than Japan's.

All of which makes one wonder, why would rational intelligent men advocate a return to the failed and discredited policies of fifty years ago? Irritation over our bilateral trade deficit with Japan and the trade barriers - both real and imagined - that Japan erects against some U.S. goods are insufficient reasons to scuttle the most successful trade system in history and risk a world trade war with the inevitable worldwide depression that would follow.

In large part, this destructive attitude is based on a failure to comprehend that our present trade deficit is due almost entirely to a depressed economy and an over-valued dollar, bloated by historically high interest rates. Compounding the error is a chauvinist misconception that the U.S. market is free and open to goods from other countries, while they maintain barriers to our exports.

The U.S. market is no more free or open than most other nations. In the very conspicuous matter of automobiles, the United States maintains a near-prohibitive 25 percent duty on imported trucks; we have a discriminatory 2.8 percent duty on imports from all countries but Canada, which is permitted duty-free access; we have negotiated a "voluntary" quota on Japanese automobiles, which remains a quota, no matter how many euphemisms are applied to describe it.

In addition, the United States maintains quotas or other restrictions on sugar, textiles, dairy products, wheat, peanuts, cotton, steel, meat, chemicals and other products. If Reciprocity becomes the foundation of world trade, the United States would surely become the object of retaliation against these barriers by all our trading partners.

The United States can resolve its trade problems by restoring our economy, bringing interest rates down to reasonable levels that will, in turn, reduce the dollar to realistic values in relation to other currencies, and by improving our productivity and technology so that our products become competitive with those of other nations. A return to protectionism, no matter what the label, will only exacerbate our condition.

The Case Against Reciprocity Legislation

Several members of Congress have introduced bills which would expand the President's authority under Section 301 of the Trade Act of 1974 to permit him to impose import restrictions or take other actions against foreign trade practices that deny to U.S. business "reciprocal market access" or "competitive opportunities substantially equivalent" to those offered to foreign business in the U.S. Following is a summary of the reasons why such reciprocity legislation would not serve U.S. interests.

1. A Reciprocity Approach Would Abandon Established and Proven Trade Policies, with the Likely Result of Less, Not More, U.S. and World Trade

U.S. and world international trade have grown dramatically during the past thirty years. The U.S. today is the world's largest trader. The growth in U.S. and world trade has resulted directly from the adoption of liberal trade policies by the U.S. and its trade partners. As now embodied in U.S. trade law and the GATT and MTN Codes, these policies are:

* The principle of multilateralism, i.e. the attainment of equity and reciprocity in trade relations through an overall balance of trade benefits and concessions negotiated among all countries, not through "special deals," such as discriminatory or preferential trade arrangements;
* The principle of unconditional most-favored nation (MFN) treatment, i.e., the extension of tariff and trade benefits negotiated by countries to all other countries unconditionally and without discrimination; and
* The principle of trade negotiation, i.e., the elimination of trade barriers and the expansion of world trade through a process of negotiation rather than unilateral action and reaction by trade partners.

As embodied in the current proposals, reciprocity legislation would mark a radical departure from each of these established principles.

* A reciprocity approach would abandon multilateralism in favor of *bilateralism*, i.e. the pursuit of reciprocity as measured by the balance of the trade advantages existing at a fixed point in time between the U.S. and each trade partner;
* A reciprocity approach would constitute a return to *conditional MFN*,

i.e. the conditioning of individual trade benefits on commensurate concessions, a policy that proved disastrous in the 1920's; and

- A reciprocity approach would entail a departure from a trading system characterized by negotiations to a regime of *unilateral actions and reactions* to foreign trade practices.

U.S. and international trade experience demonstrates that a policy based on these narrow concepts is less likely to achieve reciprocal trade relationships than it is to result in diminished national and world trade. The U.S. rejected these policies earlier this century because it found that they discouraged rather than fostered market access and competitive opportunities for foreign products around the world. The U.S. adopted liberal trade policies instead as a means of opening world markets and expanding world trade opportunities. The phenomenal success enjoyed by the U.S. under these established policies vindicates that decision and counsels against a retreat to reciprocity as a basis for attaining greater equity in trade.

2. The Reciprocity Approach Embodied in Current Legislative Proposals Is Unachievable, Unworkable, and Inequitable

A. Reciprocity is Unachievable

The reciprocity proposals would confer authority on the President to retaliate whenever bilateral equivalence - defined on a product-by product, sector-by-sector, or country-by-country basis- is deemed to be unattained in U.S. trade relations. Any trade policy, based on narrow equivalency concepts, is unachievable.

Product or sectoral equivalence in bilateral trade relations is infeasible because it ignores the principle of comparative advantage, i.e. all countries export products they produce relatively efficiently and import products they produce relatively inefficiently; product or sectoral imbalances are therefore inevitable among countries.

G

Country-by-country reciprocity is equally unachievable, since no two countries' import needs and export advantages are wholly complementary; bilateral trade imbalances inevitably will result.

The fact that sectoral and bilateral deficits will persist in national and world trade underscores the likelihood that reciprocity legislation will serve as a weapon for retaliation and protectionism rather than an instrument for achieving fairness in U.S. trade relations.

B. Reciprocity is Unworkable

The reciprocity bills employ various terms to refer to reciprocity - e.g. "reciprocal market access" or "substantially equivalent competitive opportunities" - but they do not define the terms or otherwise describe the practices that would constitute denial of reciprocity under Section 301. The absence of any definition in the bills is symptomatic of a basic flaw in the reciprocity approach - the absence of adequate standards for evaluating reciprocity and the inherent complexity of applying any such approach to different national trade practices.

"Reciprocity" requires a comparative judgment, measuring U.S. opportunities abroad against foreign opportunities in the U.S. A reciprocity policy therefore presents the following inseparable practical difficulties for those charged with implementing or enforcing the legislation:

* Would reciprocity mean that foreign treatment must yield *results* for the U.S. equal to those achieved by the foreign country in the U.S., measured by sectoral or trade balances or market shares? The U.S. realistically could not compel other countries to intervene in their domestic markets to the extent required to effect such results. Nor would such results be desirable since they would distort trade between products as to which each country enjoyed comparative advantages.

- If reciprocity did not require equivalent results, would it require foreign *opportunities* for the U.S. that are equal to those available in the U.S.? An "opportunities-oriented" approach applied on a *country-by-country basis* would require the U.S. to take into account all of the comparative opportunities across the whole range of products and sectors in the respective countries, including not only factors bearing upon the trade practices of both countries, but also those relating to the competitiveness of the U.S. products relative to domestic and other foreign products in the foreign markets and the capacity of U.S. industry to meet demand in such markets. If applied on a more limited *product or sectoral basis*, this approach would ignore the fundamental structural, cultural and historical differences between any two nations that affect relative opportunities, and disregard the respective comparative economic advantages of each country. In short, inordinately complex comparative economic analyses would be required by such an approach, resulting in widely divergent applications of "reciprocity" to each U.S.trade partner.

C. Reciprocity is Unfair

The objectives of reciprocity legislation, i.e. achieving fair trade and eliminating unfair trade advantages enjoyed by some foreign countries, are important. Reciprocity legislation, however, would not advance these objectives. The current proposals would adopt instead a one-sided view of fairness, i.e. they would measure market access and competitive opportunities in foreign countries against nonindigenous (i.e. U.S.) standards and require foreign countries to treat U.S. business in accordance with those standards. Thus, they would allow a U.S. company not afforded access to a foreign market on the same basis as it is available to foreign companies in the U.S. market to initiate a proceeding for retaliation against such "non-reciprocal" practice, without regard to any structural, historical or cultural difference that may necessitate or justify the different treatment by the foreign country.

A policy that disregards differences in national economies and imposes foreign standards on other countries unreasonably intrudes into the domestic economies of trade partners. For example, when applied to the Japanese distribution system, reciprocity legislation would require profound structural changes by the Japanese to facilitate greater U.S. penetration. Trade legislation that seeks to require instant national changes of this magnitude by threat of retaliation is neither fair nor likely to achieve its objectives.

3. Reciprocity Legislation Will Not Alter The Overall U.S. Merchandise Trade Deficit or Bilateral Trade Imbalance

Reciprocity legislation would have little effect on what is often advanced as a major reason for enacting it - the U.S. merchandise trade deficit and the bilateral trade imbalance with Japan. The size of these deficits results principally from three factors, none of which would be changed by reciprocity legislation:

* The enormous cost of U.S. oil imports, i.e. the U.S. would have a merchandise trade *surplus* without its dependence on oil imports;
* The recent appreciation of the dollar relative to foreign currencies, i.e., the trade deficit with Japan might be $3 billion to $4 billion less without the current disequilibrium in dollar-yen exchange rates; and
* The overall decline in U.S. productivity, i.e. the single most

important cause of declining competitiveness of U.S. products abroad.

More importantly, merchandise trade deficits and bilateral trade imbalances are not accurate reflections of the U.S. economic position. The U.S. is experiencing a surplus in its current account (i.e. the annual balance of payments for U.S. trade in merchandise, services and unilateral transfers), a condition not enjoyed by Japan. U.S. trade is far from reaching any crisis stage.

America's continuing competitiveness requires ultimately, not a policy of trade retaliation, but aggressive pursuit of economic initiatives designed to improve U.S. productivity, a sustained effort to lessen U.S. dependence on foreign energy sources, and continued expansion of the world trading system, along with enforcement of U.S. trade rights. A reciprocity approach would fail to rectify trade imbalances while accomplishing none of these more important objectives.

4. Reciprocity Legislation Would Risk Retaliation Against the U.S. by its Trade Partners and Severe Economic Costs Upon the U.S. Domestic Economy

The risks involved in adopting reciprocity policies, and their potential costs to the U.S. economy, are substantial.

* Reciprocity policies could be applied against the U.S., resulting in the closing of markets now open to the U.S.;
* U.S. trade partners could exercise GATT remedies against the U.S., resulting in the withdrawal of trade concessions by U.S. trade partners; and
* U.S. trade partners could simply counter-retaliate, resulting in protectionist measures designed to harm U.S. exports.

In general, U.S. business would be very vulnerable to these forms of retaliation. The U.S.now maintains more formal quotas than many other countries and it has numerous other nontariff barriers to trade. These practices could supply a pretext for retaliation against the U.S., particularly by the countries with which the U.S. maintains trade surpluses. As the world's largest trader, the U.S. would have the most to lose from any such trade war.

If U.S. trade partners retaliated against the U.S., the costs for U.S. trade and the domestic economy would be enormous:

* U.S. GNP would decline, i.e. foreign trade now represents over 12 percent of U.S. GNP and its importance is growing;
* U.S. employment would decline, i.e. one out of every eight manufacturing jobs in the U.S. and one-third of all farmland could be affected.

In addition, by relying on import restrictions as the means of achieving its export objectives, reciprocity legislation would impose large economic burdens on the American public.

* Consumer prices and inflation would rise, i.e. the costs of protecting U.S. industries are now running at $15 billion annually in higher prices;
* Competition would be restricted and thus national productivity, and hence employment and income, would decline.

These costs are far too great to risk in no-win bilateral trade contests.

5. The U.S. Should Pursue Its Existing Remedies Rather Than Expand Section 301

Creating a special reciprocity remedy would be especially unwise since recourse to other remedies remains available, within the context of GATT and existing U.S. trade law, for obtaining greater equity in trade.

Furthermore, to the extent the U.S. seeks redress against practices that do not violate the GATT, the sensible alternative would be to seek an expansion of the GATT, through multilateral and bilateral trade negotiations, not to usurp it through unilateral retaliatory actions. The President has authority under existing legislation to enter into such negotiations for the purpose of eliminating tariff and nontariff barriers (whether such barriers are covered or excluded from GATT). Vigorous exercise of this authority would be the most appropriate way for the U.S. to pursue the objectives of achieving greater equity and reciprocity in U.S. trade relations.

In sum, reciprocity legislation would be an unprecedented, perilous and needless protectionist undertaking - one likely to thwart rather than advance trade liberalization, and damage rather than enhance the U.S. economic position.

STATEMENT OF
JULIAN C. MORRIS
PRESIDENT
OF THE

AUTOMOTIVE PARTS AND ACCESSORIES ASSOCIATION, INC.

PRESENTED
TO THE SUBCOMMITTEE ON INTERNATIONAL TRADE
UNITED STATES SENATE

We would like to commend the subcommittee members for their vast efforts to win fair and equitable market opportunities worldwide for U.S. exporters.

As an industry facing the twin ills of under-capacitv and under-employment, we welcome the reciprocity approach as a valuable alternative to any short sighted protectionist remedies. An arsenal of retaliatory weapons and the willingness to employ them should bolster our negotiations' efforts to gain reciprocal market access. When talk proves futile, we believe the U.S. must swiftly apply retaliatory pressure -- be it through an expanded array of Section 301 powers or more vigorous use of the many existing powers in Section 301.

While ardent supporters of the "two-way street" school of trade APAA prefers the approach of economic incentives to gain reciprocal trading access. We have developed such a plan and enclose a summary for your consideration and approval. Our vehicle import duty remission plan could spur significant U.S. parts exports through the enhancement of existing duty remission incentives.

We agree with Senator Heinz's enunciation of the principles of reciprocity legislation, and believe our plan would dovetail with the pending legislation. The parts purchase incentives, available to vehicle manufacturers of all nations wishing to participate, would open vast foreign market opportunities for U.S. manufacturers while retaining our open markets.

The rationale for our plan follows.

INCREASING U.S. AUTO PARTS EXPORTS

THE PARTS PURCHASE INCENTIVE PLAN

A RATIONALE

AUTOMOTIVE
PARTS &
ACCESSORIES
ASSOCIATION

IN 1960, THE U.S. PRODUCED OVER 52% OF THE CARS MADE WORLDWIDE; JAPAN PRODUCED ONLY 1.3%. IN 1970, THE U.S. SHARE HAD FALLEN TO 29%; JAPAN WAS UP TO 14%. BY 1980, JAPAN HAD PASSED US AS THE FRONTRUNNER OF CAR PRODUCING NATIONS WITH OVER 24% OF THE WORLD MARKET; WE WERE DOWN TO UNDER 22%.

THE UNNATURAL GROWTH IN PRODUCTIVITY AND PRICE COMPETITIVENESS OF THE JAPANESE AUTO PARTS INDUSTRY IS NOT SIMPLY A FUNCTION OF OPTIMAL MANAGEMENT PRACTICES AND PRODUCTION TECHNIQUES. THE JAPANESE VEHICLE MANUFACTURERS HAVE A LONG ESTABLISHED FAMILY RELATIONSHIP WITH MOST OF THEIR PARTS SUPPLIERS CONSISTING OF INTERLOCKING DIRECTORSHIPS AND EQUITY POSITION, UNDER THE AEGIS OF THE CENTRAL BANK'S TRADITIONAL PRACTICE OF SELECTIVE ACCESS TO CREDIT. THIS HAD RESULTED IN A HIGHLY NATIONALISTIC, IN-BRED, PROTECTED AND VIRTUALLY IMPENETRABLE VEHICLE MANUFACTURER-SUPPLIER ENVIRONMENT IN THAT COUNTRY.

DECADES OF PROTECTIONISM, SUCH AS AMAZINGLY LOW TAX RATES, ENORMOUS ASSET DEPRECIATION AND DEFERRED TAXES FOR COSTS OF DEVELOPING NEW EXPORT MARKETS, KEPT COMPETITORS AT SEA. IT HAS PAID OFF FOR THE JAPANESE. AS COMMERCE SECRETARY BALDRIDGE PUTS IT: THE JAPANESE PROTECTED THEIR INDUSTRY FROM INFANCY THROUGH A STRONG GROWTH PERIOD, IT MADE THEM STRONG WITH SUBSIDIES AND THEN TURNED INDUSTRY LOOSE ON THE WORLD AND CALLED IT FREE TRADE.

U.S PARTS SUPPLIERS FACE A DEPRESSED HOME MARKET, A POTENTIAL LOSS OF 400,000 JOBS BY 1985, AND SHARP RISES IN FOREIGN MADE VEHICLES HERE AND ELSEWHERE IN THE WORLD. EXPORTING IS ESSENTIAL. WE MUST EXPORT TO ASSURE THE ECONOMIES OF SCALE THAT KEEP OUR COSTS AND PRICES INTERNATIONALLY COMPETITIVE.

THE TOLL FOR BEING LOCKED OUT OF THE AFTERMARKET FOR JAPANESE VEHICLES IN JAPAN, HERE, AND IN THIRD COUNTRIES HAS RISEN CONSIDERABLY IN RECENT YEARS AS THE WORLDWIDE CAR POPULATION FILLS INCREASINGLY WITH JAPANESE VEHICLES. IN 1960, JAPAN EXPORTED 4.2% (7000) OF THEIR DOMESTIC VEHICLE PRODUCTION. TODAY, THE JAPANESE EXPORT OVER 36% OR NEARLY 4 MILLION VEHICLES. BY CONTRAST WE EXPORT UNDER 9% OF OUR DOMESTIC PRODUCTION. OVER 46% OF THE JAPANESE CARS EXPORTED IN 1980 ENDED UP WITHIN THE BORDERS OF THE U.S. ONE PERCENT OF OUR CAR EXPORTS WERE ABLE TO PENETRATE JAPAN'S HOME MARKET.

THE U.S. HAS ATTEMPTED AND FAILED TO PROMOTE U.S. AUTO PARTS THROUGH NEGOTIATIONS AND SPONSORSHIP OF INDUSTRY TRADE MISSIONS. AT THE TIME OF THE LAST TRADE MISSION TO THE U.S. IN SEPTEMBER, 1980, BOTH GOVERNMENTS SET A GOAL OF $300 MILLION IN PURCHASES BY THE JAPANESE AUTO MANUFACTURERS WITH SIGNIFICANT GAINS TO FOLLOW. IT IS AN UNDERSTATEMENT TO SAY THAT THE JAPANESE FELL SHORT OF THAT GOAL. THEY PURCHASED ONLY A PALTRY $110 MILLION IN PARTS PARTICULARLY UNSATISFACTORY IN LIGHT OF OUR $1.1 BILLION PARTS TRADE DEFICIT WITH JAPAN.

WE CONTEND AND THE COMMERCE DEPARTMENT BACKS US UP THAT THIS STAGGERING IMBALANCE IS NOT CAUSED BY THE LACK OF QUALITY OR PRICE COMPETITIVENESS ON THE PART OF U.S. MADE PRODUCTS. NOR CAN THE ROOT OF THE PROBLEM BE ATTRIBUTED TO A STRONG U.S. DOLLAR, HIGH INTEREST RATES OR U.S. APATHY IN DEVELOPING THE JAPANESE MARKET.

THE FUNDAMENTAL CAUSE IS JAPAN'S LONGSTANDING POLICIES AND PRACTICES WHICH ENCOURAGE EXPORTS AND DISCRIMINATE AGAINST IMPORTS.

IN SPITE OF THE RECENT DEMISE OF THE JAPANESE IMPORT DUTY, THE DELIVERED PRICES OF FOREIGN VEHICLES IN JAPAN REMAINS SIGNIFICANTLY HIGH. THIS IS DUE TO THE IMPORT BIAS WHICH TINGES THE JAPANESE COMMODITY TAXES; A TAX WHICH EXEMPTS EXPORTS BUT ARE IMPOSED ON IMPORTS. THEN THERE ARE THE CERTIFICATION REQUIREMENTS, LOCAL DISTRIBUTION METHODS, ROAD TAXES WHICH DISCRIMINATE AGAINST THE THE LARGER ENGINES OF U.S. MODELS.

THESE OBSTACLES COMBINED WITH A PANOPLY OF OTHER NON-TARIFF BARRIERS AGAINST U.S. ORIGIN PARTS -- INCLUDING THE WITHHOLDING PARTS SPECIFICATIONS WHICH APPEAR TO BE DEVELOPED BEHIND DOORS CLOSED TO US; AN UNWIELDY PARTS APPROVAL SYSTEM, AND THAT UNIQUELY STRONG ALLIANCE BETWEEN VEHICLE AND PARTS MAKERS -- GENERALLY HAVE CONSPIRED TO PREVENT OUTSIDE COMPETITORS FROM PENETRATING THE WALLS OF THEIR SAFE AND SECURE WORLD.

FAILURE TO CRACK THE ORIGINAL EQUIPMENT MARKET FOR JAPANESE VEHICLES EXCLUDES US FROM THE HIGHLY LUCRATIVE REPLACEMENT PARTS MARKET.

WE WANT TO BECOME RECOGNIZED AS AUTHORIZED SUPPLIERS FROM WHICH DEALERS AND BUYERS OF JAPANESE VEHICLES AROUND THE WORLD CAN CONFIDENTLY PURCHASE REPLACEMENT PARTS.

THE TIME TO ACT IS NOW. . . BEFORE THE AFTERMARKET GOES THE WAY OF THE U.S. ELECTRONICS INDUSTRY, ANOTHER ONCE STRONG U.S. INDUSTRY FALLEN VICTIM TO JAPANESE DOMINATION THROUGH UNFAIR TRADE POLICIES.

EACH APEC MEMBER IS PAINFULLY AWARE OF THE INJURY OUR INDUSTRY HAS SUFFERED. JAPAN, IN PARTICULAR, IS RESPONSIBLE FOR THIS INJURY. UNLIKE THE U.S., IT BELONGS TO THE "ONE WAY TRADE" SCHOOL OF THOUGHT. WHILE THE JAPANESE INUNDATE OUR MARKETS, THEY WILL NOT AFFORD US ACCESS TO THEIR HUGE MARKET.

WE MUST STOP THE INJURY TO OUR INDUSTRY FROM BECOMING CHRONIC. THE TIMES CALL FOR EXTRAORDINARY AND IMMEDIATE STEPS.

TO DO SO, WE PROPOSE FREE TRADE INCENTIVES RATHER THAN TRADE RESTRICTIONS. UNLIKE PUNITIVE MEASURES UNDERTAKEN BY OTHER NATIONS, OUR PLAN WOULD OFFER REWARD. RATHER THAN REPELLING A NATION' GOODS, WE WOULD MAKE TWO WAY TRADE MUTUALLY BENEFICIAL. HAD OUR PROPOSED AUTOMOTIVE PRODUCTS TRADE CREDIT BEEN IN EFFECT IN 1981, FOREIGN VEHICLE MANUFACTURERS COULD HAVE SAVED $850 MILLION ON THEIR EXPORTS TO THE U.S. THEY COULD HAVE DONE SO BY PURCHASING AN EQUIVALENT AMOUNT OF U.S. MADE PARTS AND ACCESSORIES.

THE AUTOMOTIVE PRODUCTS TRADE CREDIT WE PROPOSE IS A VARIATION ON A FAMILIAR THEME OF DUTY REMISSION -- ALREADY ON THE BOOKS. ITEM 807.00 OF THE TARIFF SCHEDULE GIVES FIRMS IN FOREIGN NATIONS SOME INCENTIVES TO PURCHASE U.S. COMPONENTS FOR ASSEMBLY INTO FINISHED GOODS FOR SALE IN THE U.S.

FOR EXAMPLE, A VEHICLE MANUFACTURER IN A FOREIGN COUNTRY MAY PURCHASE U.S. AUTOMOTIVE COMPONENTS FOR ASSEMBLY INTO FINISHED VEHICLES. IF THOSE AUTOMOBILES OR LIGHT TRUCKS ARE SOLD IN THE U.S., THE VALUE OF U.S. CONTENT ADDED MAY BE DEDUCTED FROM THE TOTAL VALUE. THIS WOULD GIVE THE VALUE FOR DUTY. SINCE THE AMOUNT TO BE CHARGED FOR DUTY IS LOWER, THE DUTY PAID WILL BE LOWER.

THE COMMERCE DEPARTMENT REPORTS THAT NEARLY $13.8 BILLION IN 1980 IMPORTS CAME IN UNDER ITEM 807.00. MOTOR VEHICLES ACCOUNTED FOR ABOUT 38% OF THAT AMOUNT.

THE EXHIBIT SHOWS MOTOR VEHICLE IMPORTS UNDER ITEM 807.00 FROM JAPAN AND MEXICO.

1980 MOTOR VEHICLE IMPORTS (ITEM 807.00)
(in thousands of dollars)

COUNTRY	TOTAL VALUE ($)	DUTY FREE VALUE	DUTIABLE VALUE
JAPAN	$2,700,000	$14,885	$2,685,685
MEXICO	87	43	45

IN 1980 VEHICLE MANUFACTURERS IN JAPAN WHO IMPORTED COMPONENTS FROM THE U.S. AND MADE USE OF ITEM 807.00 DUTY REMISSION SAVED $412,780 IN DUTY. THE SAVINGS CAME FROM ASSESSING THE DUTY ON A SMALLER AMOUNT, HAVING FIRST DEDUCTED THE VALUE OF THE U.S. CONTENT.

ITEM (A) SHOWS HOW THE CURRENT LAW WORKS. AN AVERAGE $5,000 JAPANESE CAR IMPORT WITH NO U.S. CONTENT LANDS IN THE U.S. THE 2.8% AD VALOREM DUTY RATE WOULD APPLY TO THE $5,000 TOTAL VALUE. THE $140 DUTY WOULD MAKE THE LANDED COST OF THE VEHICLE $5,140. IF THE VEHICLE MANUFACTURER HAD USED $300 WORTH OF U.S. COMPONENTS THE $300 COULD BE DEDUCTED FROM THE $5000 TOTAL VALUE. THIS WOULD GIVE A DUTIABLE VALUE OF $4700. WHEN THE 2.8% DUTY RATE APPLIES TO THE $4700, THE DUTY OWED IS $131.60. THE MANUFACTURER HAS CUT $8.40 FROM THE DUTY.

BY PURCHASING $1000 IN U.S. AUTOMOTIVE PRODUCTS, THE LANDED COST WOULD BE $5112. BY USING U.S. CONTENT FOR 20 PERCENT OF THE VEHICLE, THE MANUFACTURER WOULD SAVE $28 IN DUTY.

Example (A)

Current Law - Cars

	U.S. Parts Purchased $	Ad Valorem Value $	Duty %	Duty $	Landed Cost	Value of Deduction $
$5000 Car	-0-	5000	2.8	141.00	5140.00	-0-
	300	4700	2.8	131.60	5131.60	8.40
	1000	4000	2.8	112.00	5112.00	28.00

EXAMPLE (AA) SHOWS THE SAME TYPE OF COMPARISON FOR LIGHT TRUCKS. WITH NO U.S. CONTENT, THE 25% DUTY RATE APPLIED TO THE AVERAGE LIGHT TRUCKS VALUE OF $4100 ADDS $1025 TO THE VEHICLE LANDED COST. PURCHASES OF $600 WOULD REDUCE THE DUTIABLE VALUE FROM $4100 TO $3500. APPLYING THE 25% DUTY RATE, THE DUTY WOULD BE $825.00. THIS MAKES THE VEHICLES LANDED COST $4975. THE MANUFACTURER HAS SAVED $150 IN DUTY BY PURCHASING $600 OF U.S. AUTOMOTIVE PRODUCTS.

Example (AA)

Current Law - Light Trucks

	U.S. Parts Purchased $	Ad Valorem Value $	Duty %	Duty $	Landed Cost	Value of Deduction $
$4100	-0-	4100	25.0	1025	5125	-0-
Light	300	3800	25.0	950	5050	75.00
Truck	600	3500	25.0	875	4975	150.00

WHEN THE DUTIES ARE HIGH, AS IN THE CASE OF LIGHT TRUCKS, VEHICLE MANUFACTURERS GET MUCH MORE BANG FOR THE BUCK OUT OF THE ITEM 807.00 REMISSION. HOWEVER, THE LOW AUTO DUTY RATE, SCHEDULED TO GO LOWER, OFFERS FAR LESS INCENTIVE TO PURCHASE U.S. AUTOMOTIVE PRODUCTS. THIS IS NOT THE ONLY IMPORTANT LIMITATION OF THE CURRENT LAW. IT LIMITS THE DUTY REMISSION TO THE VALUE OF U.S. COMPONENTS THAT RETURN ON VEHICLES TO THIS COUNTRY. IT FOREGOES THE CHANCE TO INSTALL U.S. PRODUCTS ON VEHICLE SHIPMENTS TO THIRD MARKETS.

DESPITE THE LIMITED INCENTIVE FOR PURCHASING CAR COMPONENTS UNDER ITEM 807.00, THE EXHIBIT WE LOOKED AT EARLIER SHOWS A HIGH LEVEL OF INTEREST BY VEHICLE MANUFACTURERS IN JAPAN. THAT LEVEL OF INTEREST GIVEN A LIMITED PLAN OFFERS SOME EXCITING PROSPECTS FOR USE OF OUR AUTOMOTIVE PRODUCTS TRADE CREDIT. THE CREDIT INCENTIVE WILL BE MUCH MORE GENEROUS. OUR PLAN WILL CUT ONE DOLLAR IN DUTY FOR EVERY DOLLAR OF U.S. PRODUCT WHICH THE VEHICLE EXPORTER HAS PURCHASED. THE CURRENT LAW CUTS THE AMOUNT TO BE TAXED BEFORE APPLYING THE TAX. OUR PLAN WOULD ASSESS THE FULL TAX AND THEN GIVE A CREDIT EQUAL TO THE AMOUNT OF U.S. PRODUCTS PURCHASED.

EXAMPLE (B) SHOWS A MANUFACTURER USING $100 IN U.S. AUTOMOTIVE PRODUCTS. THE $5000 VALUE OF THE CAR WOULD HAVE THE FULL DUTY OF 2.8% ASSESSED. THE $140 IN DUTY WOULD THEN BE REDUCED BY THE $100 OF PRODUCTS PURCHASED. THIS LEAVES ONLY $40 IN DUTY. THE FOLLOWING LINES SHOW THAT THE AMOUNT OF DUTIABLE VALUE DOES NOT CHANGE, AS IT DOES UNDER CURRENT LAW. RATHER, WHEN $300 IN PURCHASES HAVE BEEN MADE, THE $140 DUTY IS ELIMINATED. THE CAR LANDS DUTY FREE. OF COURSE, THE MAXIMUM CREDIT ALLOWED IS THE AMOUNT OF DUTY THAT WOULD NORMALLY BE DUE. FOR A $5000 CAR, REGARDLESS OF THE AMOUNT OF PRODUCT PURCHASED OVER $140, THE CREDIT COULD NEVER EXCEED $140

Example (B)

Duty Remission Credit Program - Cars

	U.S. Parts Purchased $	Ad Valorem Value $	Duty %	Duty $	Landed Cost	Value of Credit $
$5000 Car	100	5000	2.8	140	5040	100
	300	5000	2.8	140	5000	140
	600	5000	2.8	140	5000	140

EXAMPLE (BB) SHOWS AN AVERAGE LIGHT TRUCK IMPORT WITH A TOTAL VALUE OF $4100. THE 25% DUTY IS APPLIED IN EACH INSTANCE, AND THE DUTY OWED IS ALWAYS $1025. THE CREDIT AGAINST DUTY OWED ARE SHOWN FOR THE VARIOUS PURCHASE LEVELS OF $100, $300 and $600. THE MAXIMUM CREDIT PERMITTED IS $1025.

Example (BB)

Duty Remission Credit Program - Light Trucks

	U.S. Parts Purchased $	Ad Valorem Value $	Duty %	Duty $	Landed Cost	Value of Credit $
$4100	100	4100	25.0	1025	5025	100
Light	300	4100	25.0	1025	4825	300
Truck	600	4100	25.0	1025	4525	600

COMPARISON OF DUTY OWED

	NO U.S. PARTS SOLD	$300 U.S. PARTS SOLD/VEHICLE	
	EXISTING DUTY SCHEDULE	CURRENT LAW	USING CREDIT
$5000 Car	$ 140.00	$131.60	$ 0.00
$4100 Light Truck	$1,025.00	$950.00	$725.00

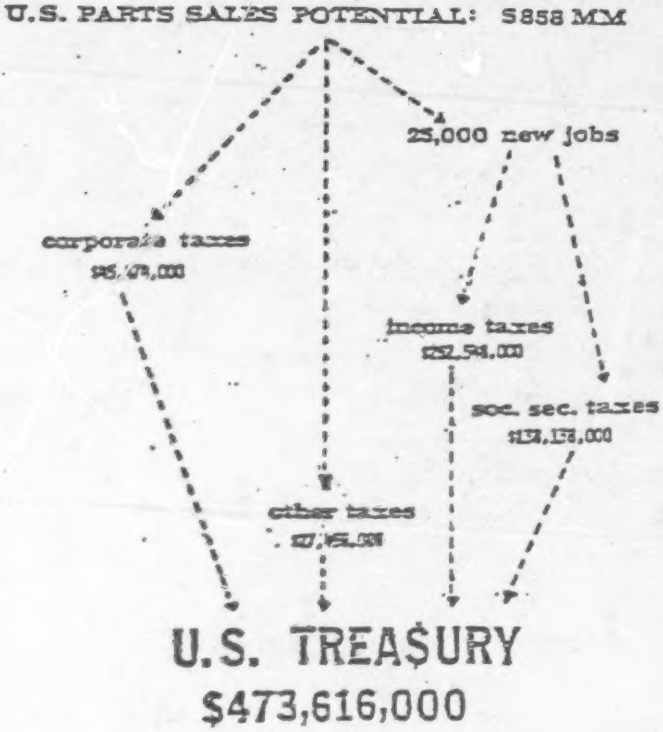
UNDER THE PLAN, A VEHICLE MANUFACTURER IN A FOREIGN COUNTRY WOULD PURCHASE U.S. PARTS AND ACCESSORIES, AND HAVE THEM SHIPPED TO ONE OF ITS FOREIGN PLANTS. THE SECRETARY OF COMMERCE WILL DEVISE THE MEANS TO MONITOR THE PURCHASE ORDERS AND EXPORTS.

THE MANUFACTURER THEN EXPORTS CARS AND/OR LIGHT TRUCKS TO THE U.S. WHEN THEY LAND, THE DUTY RATES ARE APPLIED, 2.8% FOR CARS AND 25% FOR LIGHT TRUCKS. THAT AMOUNT OF DUTY WILL THEN BE REDUCED IN AN AMOUNT CORRESPONDING TO THE VALUE OF U.S. PARTS PURCHASED. EVEN IF THE MANUFACTURER HAS NOT INSTALLED THE U.S. PRODUCTS ON THE VEHICLES, NOT ONE DIME OF THE CREDIT WILL BE JEOPARDIZED.

OF ALL THE ADVANTAGES THAT RECOMMENDED THIS PLAN, NONE IS GREATER THAN THE VOLUME OF SALES AND JOBS IT WOULD GENERATE FOR OUR SUPPLIERS. MANUFACTURERS OF CARS AND LIGHT TRUCKS IN FOREIGN COUNTRIES COULD LAND THEIR VEHICLES IN THE U.S. DUTY FREE, BY USING AN AVERAGE OF $140 IN AUTOMOTIVE PRODUCTS PER $5000 CAR AND $1025 IN PRODUCTS PER $4100 LIGHT TRUCKS. THEY WOULD SAVE OVER $850 MILLION IN DUTY, AND THAT TRANSLATES INTO $858 MILLION IN U.S. AUTOMOTIVE PRODUCT EXPORTS.

1981 MAXIMUM AUTOMOTIVE PRODUCTS TRADE CREDIT

IMPORT TYPE	UNITS	AVERAGE MAXIMUM CREDIT ($)	TOTAL MAXIMUM CREDIT ($)
Japanese Cars	1,910,415	140	267,458,100
Japanese Light Trucks	443,514	1,025	454,601,850
TOTAL CARS (ALL SOURCES)	2,850,753	140	399,105,420
TOTAL LIGHT TRUCKS (ALL SOURCES)	447,568	1,025	458,757,200
TOTAL MAXIMUM CREDIT (ALL SOURCES)			857,862,620


U.S. PARTS SALES POTENTIAL: $858 MM
25,000 new jobs
corporate taxes
$95,[illegible],000
income taxes
$252,594,000
soc. sec. taxes
$132,178,000
other taxes
$27,[illegible]
U.S. TREA$URY
$473,616,000

SENATOR HEINZ RECENTLY CITED U.S. DEPARTMENT OF COMMERCE STATISTICS THAT FOR EVERY $1 BILLION IN EXPORTS THERE ARE 30,000 JOBS CREATED. MAXIMUM USE OF THE AUTOMOTIVE PRODUCTS TRADE CREDIT WOULD YIELD MORE THAN 25,000 JOBS.

THE CHART SHOWS HOW $858 MILLION IN AUTOMOTIVE PRODUCT EXPORTS WOULD GENERATE $473,616,000 IN TAX REVENUES. THE CREATION OF 25,000 JOBS WOULD STIMULATE MORE THAN $262 MILLION IN PERSONAL INCOME TAXES AND OVER $138 MILLION IN SOCIAL SECURITY TAXES. CORPORATE INCOME TAX PAYMENTS WOULD CLIMB BY MORE THAN $45 MILLION AND THERE WOULD BE OTHER TAX REVENUES OF OVER $27 MILLION. THE FIGURES ARE BASED ON THE 1.7 TAX MULTIPLIER, WHICH D.O.T.'S TRANSPORTATION SYSTEMS CENTER USES TO CALCULATE $552 IN TAX REVENUES GENERATED PER THOUSAND DOLLARS OF MANUFACTURED SALES. SINCE WE ARE TALKING ABOUT 858,000 THOUSANDS OF DOLLARS IN SALES, THE IMPACT IS ENORMOUS.

THE OTHER SIDE OF THE COIN, AS SENATOR HEINZ POINTED OUT, IS THAT FOR EVERY 30,000 UNEMPLOYED WHO GO TO WORK, THE TREASURY SAVES NEARLY $1 BILLION IN LOST REVENUES AND TRANSFER PAYMENTS. IF WE ADD TO THE NEW REVENUES GENERATED THE CONSTANTLY ESCALATING TRANSFER PAYMENTS THAT COULD BE SPARED BY OUR PROGRAM, WE CAN ANTICIPATE THE BENEFIT TO THE TREASURY TO BE AT LEAST $858 MILLION.

LET'S ALSO LOOK AT THE INCOME 25,000 JOBS CAN ADD TO THE ECONOMY. IN 1981, A U.S. PRODUCTION WORKER EARNED AN AVERAGE OF $10.97 AN HOUR IN WAGES AND FRINGE BENEFITS. TWENTY-FIVE THOUSAND WORKERS EARNING $438 A WEEK WOULD ADD MORE THAN $569 MILLION IN EARNINGS.

THE TRANSPORTATION SYSTEMS CENTER ESTIMATES THAT A DOLLAR OF LOST PURCHASING POWER LEADS TO A TWO-DOLLAR DECLINE IN LOCAL INCOME. USE OF OUR PROGRAM TO STIUMLATE $858 MILLION IN EXPORTS COULD REVERSE THAT BLEAK TREND FOR 25,000 WORKERS AND THEIR COMMUNITIES, --ADDING MORE THAN $1.1 BILLION TO LOCAL INCOME. TWENTY-FIVE THOUSAND WORKERS WHO WOULD OTHERWISE CURB THEIR PURCHASES AND DRAW DOWN THEIR SAVINGS, COULD ONCE MORE BE CONSUMERS AND SAVERS.

OTHER ADVANTAGES OF OUR PLAN:

PROMOTES EFFICIENCY. ONLY THE MOST EFFICIENT PRODUCERS WITH THE MOST RELIABLE PRODUCTS WILL GET THE JAPANESE BUSINESS.

IT IS DIRECTED WITH EQUITY TO ALL COUNTRIES WITH MANUFACTURERS WHO WISH TO PARTICIPATE.

IT INTENDS TO OPEN OTHERS' DOORS AND NOT SHUT OURS.

IT RELEASES DEALERS OF JAPANESE VEHICLES WORLDWIDE FROM THE STRANGLEHOLD OF JAPANESE MANUFACTURERS.

May 5, 1982

Electronic Industries Association

Sen. John C. Danforth
United States Senate
460 Russell Senate Office Building
Washington, DC 20510

Dear Senator Danforth:

We regret we are not able to appear at your hearings on S.2094 and other "reciprocity" bills, scheduled for Thursday afternoon, May 6, 1982. Recently the Board of Directors of the Communications Division of Electronic Industries Association endorsed a general policy on reciprocity, and specifically several of the bills currently being considered by your committee. The statement as a result of that board action has not yet been through all the clearance procedures necessary within our organization, but I would like to characterize, for the record, its salient points.

The Communications Division of EIA is fundamentally in favor of the principle of reciprocity in international trade, and endorses appropriate legislation. The Communications Division consensus is that the principle of "substantially equivalent market opportunity" as embodied in S.2094, S.2071, and S.2356, is to be commended and applauded. Codification of the principles enunciated in those pieces of legislation should be a long step toward assuring market access among our trading partners.

However, a significant portion of our memberships feel strongly the bills do not go far enough. Without enforcement techniques, many feel the bills, if they are passed, will contribute to a belief that the problem has been addressed and solved. It's not at all clear to that portion of our membership that the current legislation will in fact yield a solution for the current inequity in certain international trade situations.

With that caveat, a consensus of our members endorses and supports the concept of reciprocity in international trade, and specifically S.2094 and S.2071. We ask that this letter be made a part of the hearing record with regard to reciprocity legislation. Thank you for your consideration.

Sincerely,

John Sodolski
Vice President

JS/gn

2001 Eye Street, N.W. · Washington, D.C. 20006 · (202) 457-4900 · TWX: 710-822-0148

THE JOINT INDUSTRY GROUP
U.S. CHAMBER OF COMMERCE
WASHINGTON, D.C.

DAVID J. ELLIOTT, CHAIRMAN
P.O. BOX 599, CINCINNATI, OHIO 45201

Statement of The Joint Industry Group on Trade Negotiation Authority and Proposed Reciprocal Market Access Legislation

In making this statement the Joint Industry Group has the support of the following associations and businesses that they represent.

Air Transport Association of America
American Association of Exporters & Importers
American Electronics Association
American Paper Institute
American Retail Federation
Chamber of Commerce of the United States
Cigar Association of America
Computer & Business Equipment Manufacturers Association
Electronic Industries Association
Foreign Trade Association of S. California
International Hardwood Products Association
Motor Vehicle Manufacturers Association
National Association of Furniture Manufacturers
National Association of Photo Manufacturers
National Committee on International Trade Documentation
National Foreign Trade Council
National Customs Brokers & Forwarders Association
Pharmaceutical Manufacturers Association
Scientific Apparatus Makers Association
Southern Furniture Manufacturers Association
The U.S. Council for International Business

The Joint Industry Group is very appreciative of this opportunity to submit our statement relative to "reciprocal market access" legislation and the need for renewal of trade negotiation authority for the United States Trade Representative under Section 124 of the Trade Act of 1974. In making this statement, the Joint Industry Group has the support of the following associations and businesses they represent:

The Air Transport Association of America - represents nearly all scheduled airlines of the United States.

The American Electronics Association - has over 1900 high technology electronics companies as members. Its members are mostly small to medium in size, with more than half employing fewer than 200 people.

The American Association of Exporters and Importers - represents over 1,200 companies, many small to medium in size, plus 200 customs brokers, attorneys and banks.

The American Paper Institute - serves companies that manufacture pulp, paper and paper board in the U.S. Provides a forum for members to discuss, within legal constraints, issues that affect them.

The American Retail Federation - an umbrella organization encompassing thirty national and fifty state retail associations that represent more than one million retail establishments with over 13,000,000 employees.

The Chamber of Commerce of the United States - represents over 236,000 companies and 2,800 state local Chambers of Commerce.

The Cigar Association of America - includes 75% of all U.S. cigar sales and major cigar tobacco leaf dealers.

The Computer & Business Equipment Manufacturers Association - includes nearly forty members with 1,000,000 employees and in excess of $50 billion in worldwide revenues. Members range from the smallest to the largest in the industry.

The Electronic Industries Association - its 400 member companies, which range in size from some of the very largest American businesses to manufacturers in the $25-50 million annual sales range, have plants in every State in the Union.

The Foreign Trade Association of Southern California - represents 250 firms in Southern California in the import-export trade.

The International Hardwood Products Association - an international association of 250 importers, suppliers and allied industry members. Members handle 75% of all imported hardwood products and range in size from small private businesses to the largest in the industry.

The Motor Vehicle Manufacturers Association - its 9 members produce 99% of all U.S.-made motor vehicles.

The National Association of Furniture Manufacturers
The Southern Furniture Manufacturers Association - over 275,000 employees representing NAFM and SFMA with over $10 billion in sales produced by the domestic furniture manufacturers.

The National Association of Photographic Manufacturers - its corporate membership employs approximately 115,000 individuals and represents over 90% of domestic shipments of photographic products.

The National Committee on International Trade Documentation - includes many of the major U.S. industrial and service companies.

The National Customs Brokers & Forwarders Assoc. of America, Inc. - a nationwide organization composed of licensed Customs brokers and ocean/airfreight forwarding firms. The national association has 24 regional and local affiliated associations of brokers and forwarders located in every major U.S. port. The combined membership handles most of the general cargo imported into and exported from this country.

The National Foreign Trade Council - is the oldest and largest private, non-profit organization exclusively concerned with the expansion of American foreign trade and investment. More than 650 firms make up the membership of the NFTC with council members accounting for over 70% of all U.S. exports and over 70% of all U.S. foreign direct private investment.

The Pharmaceutical Manufacturers Association - is a non-profit scientific and professional organization. Its active members are composed of firms that discover, develop and produce prescription drugs and medical devices and diagnostic products.

The Scientific Apparatus Makers Association - represents manufacturers and distributors of scientific, industrial and medical instrumentation and related equipment.

The U.S. Council for International Business - a business policy-making organization which represents and serves the interests of several hundred multinational corporations before relevant national and international authorities.

The Joint Industry Group strongly believes that renewal of the United States Trade Representative's trade negotiation authority under Section 124 of the Trade Act of 1974 is in the national interest. Renewal of this authority will facilitate removal of:

1. Tariff barriers to U.S. exports, especially in less developed countries. Several current opportunities to negotiate effectively with LDC's are being hindered by lack of this authority.

2. Trade-distorting discrepancies between certain low U.S. and high foreign tariffs.

For example, reductions in foreign tariffs on the following products would increase U.S. exports and employment:

Semi-conductors	European Community
Plastic containers	Canada
Insect Screenings	Canada
Cigars	European Community
Pipe Tobacco	European Community

Aluminum truck wheels	European Community
Furniture	Canada et al
Industrial Perfumes	Canada & Philippines
Disposable Diapers	LDC's generally
Toilet Goods	LDC's generally
Soaps and detergents	LDC's generally

Successful past use of the trade negotiation authority under Section 124 of the Trade Act of 1974 ranges from reductions in Japanese semi-conductor duties to parity with the U.S. at 4.2% -- which is important to maintaining the overall economic health of the U.S.-industry -- to a reduction in Tawain's disposable diaper duty -- which alone could expand exports enough to create about 300 new jobs in the U.S. It is our understanding that the negotiations were concluded successfully without reducing U.S. duties on labor intensive or import sensitive products.

While U.S. employment would be expanded by improved foreign market access through limited bilaterial negotiations under renewed Section 124 authority, protection against job losses in the U.S. would be provided by the requirements in the law that no U.S. duties may be reduced by more than 20% or reduced below the maximum cuts permissible in the Tokyo Round, and that tariff negotiations could cover only 2% of U.S. imports by volume in the most recent year prior to the negotiations. In addition, it has been the practice of Administrations using this authority to determine industries and products that are "import sensitive" and to avoid negotiating reductions in those tariffs.

Consequently, the Joint Industry Group strongly urges:

1. A two year renewal of Section 124 authority as provided in S.1902 with extension to commence on the date of enactment.

2. The trade negotiation authority renewal be kept separate from the policy oriented "reciprocity" legislation.

The Joint Industry Group is particularly concerned about proposals that we understand are under consideration whereby Section 124 authority in the "omnibus" bill would be replaced by a provision for "unbinding" U.S. commitments under the General Agreement on Tariffs & Trade. The aim of this approach would be to strengthen exports in specific areas, while at the same time providing compensation on other tariff items.

Unbinding and raising U.S. duties requires compensation under the GATT. Such compensation may come in the form either of reduced U.S. duties on other products -- with a potential for a negative impact on U.S. manufacturers and workers -- or increases in foreign duties that would be harmful to other U.S. exporters and their employees. Once initiated by any country such an approach is likely to be followed by others--particularly at a time of relatively low economic activity in the developed countries and the intense competition in international trade that now exists and will probably continue. The result could lead to a serious destabilization of the world trading system.

The Joint Industry Group believes that this is not the time to substitute Section 124 authority with this different approach.

Thank you for your consideration of our position. We would be pleased to supply additional information if it is appropriate.

DJE:djb

0509F

NAM
National Association
of Manufacturers

LAWRENCE A. FOX
Vice President and Manager
International Economic Affairs Department

May 19, 1982

Honorable John C. Danforth, Chairman
International Trade Subcommittee
Senate Committee on Finance
460 Russell Senate Office Building
Washington, D.C. 20510

RE: Reciprocity Legislation and the Hearings of May 6, 1982

Dear Mr. Chairman:

The National Association of Manufacturers has long been concerned by the erosion of America's international competitiveness. As the representative of more than 12,000 companies -- companies that account for more than 80% of U.S. industrial output and more than 85% of U.S. industrial employment -- we must be concerned with the alarming string of trade deficits the United States has incurred since 1971 and our loss of market shares in key industrial sectors here at home and in countries around the world. In a sense these developments are but symptoms. Behind them lie a multitude of problems, many of which cannot be dealt with through adjustments in trade policy. Certainly, though, they underscore the need for trade policies that are both appropriate and effective.

We appreciate that it was this need that led you, Senator Heinz and others to introduce new trade legislation which has come to be known as "reciprocity legislation." At a time when recession and high unemployment have made governments around the world highly sensitive and more than a little defensive on matters relating to international trade, it is important that the United States act cautiously and in accord with sound policy principles in the exercise of its international leadership.

I can but commend you, Mr. Chairman, and the Subcommittee for the deliberate manner in which you have proceeded in your consideration of the "reciprocity" legislation. I would be grateful if this letter could be made part of the record of the Subcommittee's hearings of May 6 at which business organizations presented their views. For the sake of simplicity, I have not attempted to comment on each of of the bills. I have dealt rather with the general question of approaching our current trade problems through legislation of this type and have focused specifically on your bill, S.2094.

The responsibility for establishing policy regulating trade has been conferred by the Constitution upon Congress. It has long been recognized, however, that this responsibility can only be satisfactorily discharged through close cooperation with the Executive Branch. The pattern in recent decades has been for the Congress to grant authority to the President both to negotiate with U.S. trading partners, with a view to expanding U.S. markets, and to take such administrative action with respect to burdensome trade practices by others as the law and circumstances may require. This was the essence of the Trade Act of 1974, which, in addition to providing the negotiating authority for the Tokyo Round, established in Section 301 the U.S. law's most general provision for dealing with unfair trade practices. As you know, Section 301 was then further expanded by the Trade Agreements Act of 1979.

At this juncture it is fair to ask whether additional legislation is needed to deal with the problems now before us or whether what is called for is a more creative, more vigorous and above all more consistent use of the legal tools already at the disposal of the Administration.

Some modification of existing law may be in order. We suggest below changes we think would be helpful, some of which are already contained in S. 2094. These suggestions, however, should not obscure the fact that the greatest potential for useful action in trade policy lies within the powers already granted to the Executive. Nor should it cloud our conviction that any action we take outside the framework of the international system we labored so hard to construct we take at our peril.

A brief discussion of trade relations with Japan should illuminate the point. We appreciate that the legislation at issue is not directed exclusively at Japan, but certainly the problems we have with that country have provided much of the political impetus for it. The National Association of Manufacturers believes that the difficulties the United States and others have encountered in dealing with Japan constitute the most serious challenge facing the world trading system. It was for that reason that we established last January an NAM Task Force on U.S.-Japan Commercial Relations. It was also for that reason that the NAM Board of Directors unanimously adopted a resolution on Japanese-American trade relations when they met in Washington on March 17. A copy of that resolution is attached, and I should be grateful if it could be included in the record as part of this statement.

We fully agree with those in the Administration who caution that it is inappropriate and not in our national interest to suggest that the multilateral trading system ought to consist of a series of bilaterally balanced accounts. It cannot and should not. That does not mean though that we can be unconcerned about the growing and serious bilateral deficits with Japan, which last year totalled an astounding $18.1 billion on a CIF basis. Our concern though is as much with the character of the deficit as its size, specifically:

> that it is in large measure due to the serious undervaluation of the yen which has persisted over the years and has recently grown worse;
>
> that more than half of Japan's exports to the United States are in products such as cars, trucks, and steel, where the competing U.S. industries are in severe difficulty;
>
> that much of Japan's trade success can be traced to internal and export credit practices characteristic more of a directed than of a free economy; and
>
> that Japan's low propensity to import manufactured goods is contrived and detrimental to the interests of the United States and other industrial countries.

It is well known that the European Community's trade with Japan is also characterized by large Japanese surpluses, $12 billion in 1980 (official figures for 1981 are not yet available). The Europeans have now formally stated their dissatisfaction with their trade relationship with Japan in a formal submission to the GATT. In that submission the EC expresses its "concern that the benefits of successive GATT negotiations with Japan have not been realized owing to a series of factors particular to the Japanese economy which have discouraged imports of products other than raw materials." They note, for example, that although imports of manufactured goods as a percentage of GNP almost doubled in the United States and Europe in the period between 1960 and 1980, in Japan imports of manufactured goods rose only from 2.4 to 2.5%. The EC argues that "the GATT objective of 'reciprocal and mutually advantageous arrangements' has not been adequately achieved between the European Community and Japan." I should note also that the EC has directed its Finance Ministers to take up the problems brought about by the undervalued yen, which the EC refers to as "a *sui generis* currency."

In view of the importance of the exchange rate question in giving Japan a trade advantage with the United States and the rest of the world, I am enclosing a recent speech on this subject and suggest that it too be made part of the record of the hearings on S. 2094.

The formal action by the EC is taken under Article XXIII of the GATT, which deals with nullification and impairment of trade liberalization benefits. It is worth noting that while the complaint does not allege any specific unfair trade practice, no such allegation is required by Article XXIII. Though it refers to what might be regarded as unfair trade practices, it also refers to "the existence of any other situation" that causes nullification or impairment.

Our trade negotiators have to date not chosen to use Article XXIII as the Europeans have. Similarly, the Administration has not sought rectification of yen-undervaluation under Article IV of the IMF Articles of Agreement. This prohibits signatories from manipulating their currencies or taking other action to achieve "unfair competitive advantages" in trade. Additionally, Article IV calls for IMF surveillance over exchange rate policies and possible action for a number of reasons, including, "...behavior of the exchange rate that appears to be unrelated to underlying economic and financial conditions including factors affecting competitiveness and long-term capital movements."

Our trade negotiators should be encouraged to join the Europeans in their use of GATT Article XXIII or to work on a comparable GATT approach. Our purpose here, however, is not to quarrel with the judgments of the Administration but to illustrate that there is already significant international machinery available for dealing with the problems we face, including questions of reciprocal trade advantages among nations.

Still, as I indicated above, there are important areas in which international law is weak or silent. We believe the Committee has an opportunity to improve the framework within which our trade is conducted through legislation aimed at correcting these defects. In our view new trade legislation in the following areas would be helpful:

> Investment. In today's world trade and investment issues are all but inseparable. It is often impossible to sell many of today's products without a presence in the consuming country and the ability to service the product. In addition the widespread linkage of trade and investment through performance requirements has become an issue the GATT signatories can no longer ignore. For these reasons, we support the negotiating mandate on investment provided for in S. 2094. We further support S. 2094's explicit acknowledgement that unfair investment practices are covered under Section 301.

> Industrial property rights. Creativity and technological innovation are the cornerstone of America's success as a trading nation. It is essential that appropriate standards for protecting industrial property rights internationally be acknowledged in U.S. law and in the GATT.

What is required is an effective mechanism for government to government consultations and ultimately for U.S. government action to enforce minimum standards for the protection of industrial property rights in foreign commerce.

Trade barriers. We accept the argument advanced by Ambassador Brock that it would be inappropriate for the U.S. Government to make a series of unilateral determinations about the international legality of the practices of other nations. We see no reason, though, why lists should not be made of practices which in the judgment of the U.S. Trade Representative "appear to be inconsistent with the provisions of, or otherwise deny, benefits to the United States under any trade agreement." We do not, however, believe that the law would be improved by reference to "opportunities substantially equivalent to those offered by the United States." The issue should not be the practices of the United States but the level of market access that might be expected in the light of international agreements. Further, it is unlikely that the value of opportunities lost due to suspected import barriers could be calculated readily or with precision, and we are skeptical of the value of insisting that the Administration prepare estimates for each suspected barrier.

Tariffs. We support efforts to provide the Administration with maximum negotiating flexibility. As you are aware, the President's residual authority to negotiate additional tariff reductions, Section 124 of the Trade Act of 1974, expired in January of this year. NAM believes that the Administration's request for a two-year extension of this authority should be honored and we support legislation, such as S. 1902, to achieve this.

We appreciate the opportunity to comment on the important legislation now before you and look forward to learning the results of the Committee's deliberations on the issues discussed.

Sincerely,

Lawrence A. Fox

Attachments for the Record:
NAM Board of Directors Resolution, March 17, 1982
Conference Board Speech: A Stronger Dollar: How Durable?, February 25, 1982

NAM

RESOLUTION
ON
U.S.-JAPAN COMMERCIAL RELATIONS

Whereas Japan's industrial, trade, investment, and financial policies have led to gross imbalances in Japan's trade with the United States and other industrialized countries;

Whereas certain of these policies, as manifested in unduly large global and bilateral manufactured goods trade surpluses, pose a threat to the world trading system and to the industrial base of the United States;

Whereas the National Association of Manufacturers, the principal representative of American industry, regards the health of the U.S. industrial base as fundamental to U.S. well-being and security; and

Whereas the NAM supports a market-oriented, open international trade and investment system;

Resolved that the National Association of Manufacturers should work toward the following goals:

- greater internationalization of the yen and a more appropriate yen-dollar exchange rate;
- reduced barriers to foreign investment in Japan;
- openness of Japanese markets for goods, services and capital equivalent to that of the United States and commensurate with Japan's standing as the second largest economy of the Free World and currently the most dynamic; and
- commitment on the part of the Japanese government and Japanese business to shoulder the full measure of responsibility for the world trading system that Japan's economic strength and stake in the world trade confer upon her.

NAM, working with the American government, will take appropriate steps to inform Japanese government and business leaders of our views and thereby help to bring about constructive solutions to our mutual problems.

Adopted by the
NAM Task Force on U.S.-Japan Commercial Relations
March 9, 1982

Adopted by the
NAM Board of Directors
March 17, 1982

Conference Board 1982 Financial Outlook Conference, New York, February 25, 1982

A STRONGER DOLLAR: HOW DURABLE?

Lawrence A. Fox
Vice President for International Economic Affairs
National Association of Manufacturers

There is a common perception that the dollar is overly strong. High U.S. interest rates are mainly responsible. It is also generally believed that big balance of payments deficits loom ahead for the U.S. in 1982 and beyond--mainly due to larger U.S. trade deficits, i.e. larger than our very large 1981 deficit. High U.S. interest rates worry the Europeans, as does the Reagan Administration's "refusal" to hold down the value of the dollar--a message delivered to the American Government last week by the President of the Common Market's Council of Ministers. Hence, conventional wisdom maintains that we can expect--and some would go so far as to say "welcome"--a weaker dollar. I do not join in the clamor for a depreciated dollar. Quite the opposite. I want to discuss with you today why a strong dollar in international money markets is in our national interest, and how we should go about achieving this result.

Now that I have set the scene, I will turn directly to my subject "A Stronger Dollar: How Durable?" The first benchmark we need to focus on relates to what we mean by a strong dollar. In other words, the dollar compared to what: stronger than last summer's dollar or when it was in the pits in 1978, and again in 1979? Or the dollar in relation to the currencies of the other two world-class industrial trading countries, Japan and Germany? Or in relation to the Morgan Guaranty's well-known fourteen-country trade weighted average?

The dollar quite obviously is relatively strong at present. For this presentation, therefore, we will define a strong dollar as basically the dollar we have today. In other words, a dollar not so strong as it was under the fixed parity system of Bretton Woods prior to August 15, 1971 nor at its most recent lofty heights.

Along with the rough definition of what I mean by a strong dollar I must, of course, provide a time frame. I am talking about the trend for the whole decade of the 1980's. Obviously, this trend will not always be steady or consistent. The experience of the past few years has amply demonstrated that currencies tend to overshoot in a floating exchange rate system. Under these circumstances we can expect ups and downs in the value of the dollar, but nevertheless when you average out the ups and downs we are likely to see a strong dollar for most of the 1980s.

My basic economic outlook for the 1980s is the following: I think the fundamental conditions that prevail in the United States vis-a-vis the world economy signal a relatively better performance by the American economy than the economies of most other countries, certainly most other countries in the OECD. The economy of Japan will do better than that of the U.S., and possibly but much less certainly, so will Germany's. But an improved, more healthy U.S. economy would, I believe carry with it the implication of a stronger dollar.

Having given you my economic outlook and assumptions, I want to state at the outset that I favor a strong dollar. I do not see how our country can fight inflation successfully without a strong dollar at home, and I do not see how the United States can readily have a weaker dollar abroad and a stronger dollar at home. I suggest from this that we have no alternative other than to seek a strong dollar internationally as well as domestically so long as our objective is to succeed in the fight against inflation.

The mistake we made in the 1970s was to rely on a weak dollar to solve our trade problem. This strategy may have helped to some extent to increase our export competitiveness, but it by no means solved our trade problem and it did make our inflation problem worse. To the extent that a strong dollar is the result of a healthier American economy reflecting increased competitive strength, we have little to fear from it and no reason to weaken it.

I have some reasons for my opinions beyond prejudice, and I would like to indicate briefly the factors that can make and keep the dollar a strong currency during the 1980s. In other words, why a "strong dollar is durable."

First, I expect real interest rates to continue to be rather high in this country. By that, I mean real interest rates--representing the differences between nominal rates and the inflation rate--in the U.S. relative to other countries willing to absorb large amounts of capital. Under these circumstances from the interest rate standpoint, I do not expect on balance over time that dollars will leave the country to seek higher returns abroad in sufficiently large quantities to become a major factor working to weaken the international value of the dollar. I think that nominal interest rates in this country, although declining, will still be relatively high regardless of the real interest rates.

Second, money will stay in the United States for conventional reasons, namely, a good return on capital invested here and because of the factor of safety. I think the international political environment is such that there is a degree of sensitivity around the world which leaves many people who dispose of their own and other people's money with the idea that they should have a good part of their assets denominated in dollars, and, in fact invested in the United States if possible.

Third, I think that factors in our trade performance can work--must be made to work--in the direction of a stronger dollar. An improved U.S. trade performance could support a strong dollar not only for obvious balance-of-payments reasons, but also through improved domestic economic performance. Trade performance in this view includes improved export performance as well as more successful domestic market response to import competition in manufactured goods, thus halting the unnecessary and harmful erosion of the American industrial base through loss of domestic market shares to imports. But this improved U.S. trade performance will not take place if we have another decade of a seriously undervalued yen relative to the dollar.

I will be developing the point of the yen-dollar exchange rate further. However, I would like first to comment briefly on the broader question of how I view the balance of payments from a policy standpoint--as distinguished from the usual national accounts or technical standpoint.

A Different Perspective on the U.S. Balance of Payments

The interaction of trade and finance is a subject which I think is increasingly recognized to be of much greater importance than the current general understanding of the issue requires. The analysis of balance of payments in this country, in the IMF and private banks, and in the government and academe , is based on a conventional current account financial methodology. In this approach what really counts in determining the value of a country's currency relative to that of other countries turns on the current account and the build-up or decline in foreign currency reserves. This is what I call the "financial approach" to the balance of payments. I do not denigrate this approach.

Since this approach to the balance-of-payments and consequentially currency values and the exchange rate is well understood in this audience, I will not elaborate on this generally accepted approach. What I think is less well understood is the relationship between general economic performance, trade performance, and the strength of a country's currency. I think most of us would agree that the United States economy has performed rather poorly in the industrial sector relative to Japan and Germany. As a nation we have also done quite well at home and abroad in the service sector and in the international investment area. As a consequence we have had a good record in our current account in 1980 and 1981--albeit with the help of an official accounting change in 1978 in the definition of retained earnings held abroad by American foreign subsidiaries. Parenthetically, this piece of "creative accounting" of the Carter administration has produced a net continuing plus in the order of $12 or $13 billion in the U.S. payments balance. However after two or possibly three years of current account surpluses, virtually all analysts in and out of government are predicting a major current account deficit this year--almost entirely due to the downward thrust in our trade balance.

I would like to suggest an alternative to the financial approach to the balance of payments--a policy viewpoint, not a different accounting methodology. For lack of a better term, I would call it a trade-oriented economic growth approach. To give a real-world flavor to my observations, I would call the Japanese and German policy preference as trade-oriented while referring to the traditional American and U.K. perspective as exemplifying the financial approach. The trade-growth approach gives special weight to the importance of the contribution of the trade account in assessing the over-all quality of the balance of payments performance of a country.

Let me hasten to assure you that there is more to the trade-growth approach than the traditional unsophisticated view that a trade surplus is always better than a trade deficit. One way or another we all have to pay our oil import bills. Japan and Germany knew from the beginning that they had to pay for the high-priced oil and launched and maintained highly successful export drives to do so. In the process, they have captured markets from us not only in their own lands and in third world countries, but in the United States as well. In these countries export-led growth has come naturally--as both a slogan and a policy.

A few numbers will illustrate my point. If the United States had maintained in 1980 the share of world manufactured goods markets we enjoyed in 1970 (21.3 percent as against 18.3 percent), it would have meant an extra $23.6 billion in our manufactured goods surplus for 1980 (census basis) and thus would have eliminated the trade deficit. In other words, had we held onto our 1970 world market share of manufactured goods, our 1980 exports would have paid for all our imports: oil, cars, steel, consumer goods, everything. It is an unfortunate but widely held view that trade is very important for most countries but not for the U.S. Also, there is a tendency in this country to fail to understand the impact that American export expansion can have on domestic growth rates. After all, what difference can $30 or $40 billion additional export sales make in a

$3.5 trillion economy? The answer is a significant one. If the U.S. export growth rate of 1980 had been maintained in 1981, it would have meant a full percentage point in the rate of growth in U.S. GNP. In 1982, it could make the difference between an economy enjoying at least a bit of growth, rather than one actually in recession, as ours now is, of course.

To summarize, when I refer to a trade-oriented policy perspective rather than a financial approach to the balance of payments, I am suggesting no less than this: a whole generation of American economists, American foreign policy officials and financially oriented American institutions have underestimated the importance of the trade account from the standpoint of judging the quality of American economic performance. I hope we have begun to realize that "doing well" economically takes more than the premature celebration of the post-industrial society. The decline in productivity growth that became evident in the 1970s--in all sectors but particularly the industrial sector--has its consequences in terms of domestic economic growth, inflation, and employment. In my view, the revitalization of American industry can take place only in the context of new investment in the U.S. to supply the world markets, not just our home market. More than 20% of our manufactured goods output is exported and roughly the same proportion imported. If we could raise the export level to 25% and hold it there, (a not too difficult task), that would increase GNP in real terms by 1.2 percentage points. Over time that might be enough to change lackluster economic growth into reasonably satisfactory national economic performance.

And what would this do to productivity growth in the industrial sector? New investment in American industry can increasingly be justified only in relation to the global market, not just the U.S. home market. New American investment in plant and equipment should be materially encouraged by our new accelerated depreciation and other business tax law changes. And this new investment in high productivity plant and equipment thus must be validated by improved competitive prospects--market shares if you will--in the home market as well as in foreign markets. That is what export-led growth is all about. For Japan and Germany quite clearly it has meant new home investment and newly applied technologies to achieve the necessary economies of scale to hold on to domestic market shares while maintaining or increasing export market shares.

Is The Dollar Really Over-Valued?

There has developed a type of conventional wisdom concerning the value of the dollar. Because currency markets tend to overshoot in a floating system, the dollar clearly was too weak in the fall of 1979. The dollar strengthened following the adoption of the comprehensive monetary policies by the Volcker Federal Reserve and the Treasury Department in 1979. The dollar has strengthened and held its own from 1979 to the present day. Of course, the dollar strengthened even further as interest rates took to new heights following the election and inauguration of President Reagan.

But is the dollar really over-valued today? Has the overshooting now taken place on the high side in distinction with overshooting on the low side in the fall of 1979? Let me suggest that actually the dollar may be about "right" and that there is one currency that is seriously undervalued--the Japanese yen, and a second currency, the D-mark, which is undervalued but perhaps tolerably so.

To simplify this presentation I will confine my comments to the yen, which makes the subject easier to analyze and also makes policy prescription more straight forward. I would further suggest that, based on competitive factors, the yen has been systemtically undervalued since 1973.

Let us look at some specific indicators of U.S. and Japanese industrial competitiveness so that you can see what I mean. The original Bretton Woods dollar-gold parity came to a screeching halt on August 15, 1971, with roughly a 10% devaluation of the dollar, a 7% appreciation of the yen, and the up-valuing of certain other currencies--all this ratified in December 1971 by the so-called Smithsonian agreement. In 1973, the major western industrial countries and Japan _de facto_ terminated the

Bretton Woods system of fixed exchange rates, and went to a system called "floating" but in fact one that more aptly can be regarded as a mixed system of managed market-determined rates. From March 1973 to mid-1981, the yen appreciated from 265 per dollar to 220, though in the near-panic days in 1979 it had briefly reached near 180. But over the same eight year interval, the volume of Japanese manufactured exports increased at an annual rate of 10.1% compared to 4.6% for the U.S. If the yen had appreciated at the rate of relative change in export volume, the implied 1981 yen-dollar rate would have been 177 instead of 220. We find a similar story if we turn from volume to export prices, on a national currency basis, to test the effect on exports of domestic inflation rates. While the Japanese consumer inflation rate overall since 1973 has been approximately the same as in the U.S.--due mainly to a big surge in Japan in 1974--manufactured export prices have only increased by 7.1% per year, or almost five points lower than the U.S. rate of 11.8% per year. On this basis, the implied yen-dollar rate for 1981 would have been 189 instead of 220. Finally, let us consider overall productivity growth in terms of manufacturing output per man-hour (for which the latest comparative Labor Department statistics are complete only through 1980). In the period 1973-80, the annual U.S. growth rate in productivity was 1.7%, compared with 6.8% in Japan. On this basis, the implied value of yen in 1980 would have been 193 per dollar, in contrast to an actual average 1980 value of 227.

Naturally, I do not purport to be able to pick the one and only "correct" yen-dollar exchange rate, if indeed such a thing really exists, which I doubt. But I would cite a few yen "undervaluationists" whose words come readily to hand:

- Morgan Guaranty in its "World Financial Markets" of January 1982, when the yen was at about 220, suggested that "yen appreciation on the order of about 10% in real effective terms would provide a very appropriate market-assisted means of bringing mounting trade surpluses under control."
- Paul W. McCracken, former Chairman of the Council of Economic Advisors stated in September 1981 in Japan that "the present rate of 235 yen to the dollar is perhaps 15% or so below what many consider to be a more equilibrium purchasing power relationship."

- A recent Department of Commerce study's preliminary results which indicate that "the Japanese yen is substantially undervalued relative to the U.S. dollar--roughly 23% in 1981."

I am inclined to believe that the degree of undervaluation of the yen falls in the higher rather than the lower end of the range of the figures just cited.

Why Has The Yen Been So Weak?

I have been giving you a trade-oriented view of exchange rates and will continue to do so in explaining why the yen has been and continues to be undervalued. (Incidentally, what I have to say should be read in conjunction with a most thoughtful analysis in Janaury's Morgan Guaranty World Financial Markets entitled "Japanese Trade Frictions and the Yen.").

The major factors in post-war Japanese economic policy are well known--macroeconomic policy, monetary policy, demand management, savings, investment, innovation, etc. In referring to exchange rate policy in relation to trade I am attempting to illuminate an aspect that is to my mind unaccountably overlooked by most observers--to make a pun, an element of analysis that has been undervalued.

Japanese post-war economic strategy has in a critical sense been based on trade and investment. (The acronym--MITI--after all stands for the Ministry of International Trade and Investment.) Painting the picture in broad strokes, I would say that a basically protected home market in manufactured goods has in effect produced "monopoly profits", not to individual companies per se but to Japanese industry as a whole. These profits, of course, could be and were reinvested in Japanese industry. Exports could be competitively or even marginally priced if necessary--thus making possible longer production runs and lower unit costs, and often resulting in even higher profits on domestic sales. Government policy encouraged constant and accelerating up-grading of value-added skills in ever higher capital intensive and technology-oriented industries. To make sure that exports really could effectively penetrate foreign markets, costs were reduced further by "targeting" key industries for development at home and for export growth in major foreign markets. On top of all this, the export price was "right"--guaranteed until August 15, 1971 by an over-valued dollar under the fixed parity Bretton Woods system; and since then by a continuation of Japanese government financial policies designed to keep the yen undervalued.

Obviously Japanese authorities are a bit embarrassed at this point with the distressingly speedy turn-around in their trade balance--converting a $5 billion trade deficit into a $25 billion trade surplus in a year and one-half. Exports rose at a 25% rate while imports stagnated in this same 1980-81 period. It appears that perhaps virtually all significant manufactured goods made in Japan today can be sold on the export market. As I have explained, the reasons are not so difficult to grasp in terms of macro-economic policy in Japan, but they can only be fully comprehended in terms of continuity of exchange rate policy for a period of 30 years. The yen as a policy instrument has been undervalued not only making Japanese goods price competitive in world markets but also making imports correspondingly more expensive and less attractive on the Japanese market.

The yen-dollar rate is, of course, central to the trade strategy I have outlined. However, the cross rates with European currencies, being to a great degree determined by the dollar's exchange rate with the principal European currencies, tend to replicate more or less the conditions of an undervalued yen in relation to major European currencies, and thus to place very low priced Japanese goods in the European market. Hence the emergence of huge Japanese trade surpluses with Europe as well as the U.S.

Naturally, the question must be asked, how does all this come about? Is not Japan part of the world monetary system? The answer may be given in three parts:

1. Perceptions have been slow to change as to the "true" value of the yen.
2. The Japanese capital market is not an open one in either the New York or London sense, nor to the degree of typical European or Asian financial markets.
3. Intervention by Japanese authorities in currency markets has been purposeful, i.e. intervention has not only smoothed the ups and downs of the yen relative to the dollar, it has nipped in the bud any major corrective market action to appreciate the yen.

The days of October 1979 when the yen briefly rose to a value of 170-180 to the dollar truly tested the Japanese resolve to keep the benefits of a depreciated currency. They succeeded. That resolve is being tested again today when every financial and trade signal points in the same direction. The yen is so seriously undervalued today that the question begs to be answered: What can be done to make it appreciate?

I conclude these remarks with the answer. It is really a prescription.

1. Open Japanese financial markets and the yen will appreciate. Interest rates will rise in Japan and Japan's savings will be shared with others, just as has taken place in other countries.
2. Stop the intervention by Japanese monetary authorities designed to keep the yen low in value.

The yen will appreciate as Japanese financial markets are opened further, particularly as foreign borrowings become a business decision rather than a decision of high national policy with concomitant bureaucratic consultation, consensus-building, and the usual inordinate delay. As Japan joins the real-world monetary scene, interest rates will rise. It will be more difficult to carry out an independent, insular domestic monetary policy, and life for the monetary authorities will become more difficult. Japan will share her savings with others at real-world interest rates, just as Americans and others shared their savings with Japan at real-world interest rates by means of loans floated in New York's financial markets.

Such loans, of course, facilitated Japanese economic growth in the days when Japanese savings alone were insufficient to do the job.

It is quite clear, I believe, that the current state of formal liberalization of Japanese banking and investment controls has had only marginal effect in introducing an open capital market in Tokyo. Equally evident, I believe, is that the current mix of Japanese financial policies provides little or no impetus toward achieving a realistic value for Japan's currency. Quite the opposite.

Why should Japan abandon her successful currency stratgey? After all, the IMF does not require an open capital market. And no country has brought an IMF Article IV action against Japan charging that she has advantaged her trade at the expense of others by manipulating the yen's value.

The so-called surveillance provisions of the Article IV of the IMF are available for use. They are designed to help make certain that a floating exchange rate system is not abused. IMF members are enjoined to avoid manipulation of exchange rates:

> "...to gain an unfair competitive advantage over other members."

Among the developments that might indicate the need for Article IV surveillance consultation is:

> "...behavior of the exchange rate that appears to be unrelated to underlying economic and financial conditions including factors affecting competitiveness and long-term capital movements."

The United States Government is at liberty at any time to initiate Article IV consultations, and the IMF mechanism provides for an automatic annual review by the Fund's staff of Japan's economic policies as they affect Fund members.

I would repeat my question: Why should Japan abandon her successful strategy of maintaining an undervalued yen?

The answer is as straight-forward as the question. The world economic system requires the support of Japan at this critical time. Japan, which has benefited so much from the GATT-IMF international systems of liberal trade, finance, and investment, must protect her economic gains by a prudent policy of joining in the defense of these international arrangements which are being so sorely tried by world-wide inflation, recession, unemployment, and the worrisome unknowns of technological transformation.

Conclusion

My comments on the yen-dollar exchange rate are obviously very briefly stated. But only in viewing the yen as a seriously undervalued currency can one satisfactorily deal with the question of the dollar's strength. If the dollar is constantly viewed as over-valued, incorrect conclusions emerge respecting the steps necessary to deal effectively with inflation and resumption of growth in the United States. New investment in American industry, and the consequent improvement in American competitiveness, are made all the more difficult if loss of domestic markets and foreign markets as well is further accelerated by an unwarranted competitive advantage conferred on Japan by an undervalued yen.

In purely analytical terms, as U.S. interest rates drop, the dollar can remain strong if the outflow of interest rate-sensitive dollars is replaced by a material reduction of the global U.S. trade deficit. I think this is feasible, and represents sound U.S. national policy and responsible U.S. international economic policy.

○